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# ENVIRONMENTAL ASSESSMENT BOARD



## ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

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VOLUME: 171

DATE: Monday, November 16, 1992

### BEFORE:

HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

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ENVIRONMENTAL ASSESSMENT BOARD  
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,  
R.S.O. 1980, c. 140, as amended, and Regulations  
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro  
consisting of a program in respect of activities  
associated with meeting future electricity  
requirements in Ontario.

Held on the 5th Floor, 2200  
Yonge Street, Toronto, Ontario,  
Monday, the 16th day of November,  
1992, commencing at 9:00 a.m.

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VOLUME 171  
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B E F O R E :

THE HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

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1       ---Upon commencing at 9:05 a.m.

2                   THE REGISTRAR: Please come to order.  
3       This hearing is now in session. Please be seated.

4                   THE CHAIRMAN: This was the morning in  
5       which we were scheduled to hear the motion from  
6       Northwatch, a motion which, in effect, was asking that  
7       the hearing be terminated or some alternative action be  
8       taken.

9                   Since we last adjourned there have been a  
10      number of developments. We have had some  
11      correspondence from some of the parties in relation to  
12      the motion. We have had a letter from the proponent  
13      advocating a process of discussion with attendant  
14      adjournment, and we have had some responses from some  
15      of the parties to that proposal.

16                  In the meantime, we have scheduled to  
17      commence tomorrow the evidence of Panel 2. So that,  
18      very briefly, is where we are at this moment.

19                  I am not entirely sure what we are going  
20      today or how today is going to unfold, but I hope that  
21      we can have a useful discussion of these and various  
22      issues that are, in all ways, somewhat interrelated. I  
23      am proposing first, perhaps, to ask Mr. Campbell if he  
24      can bring us up-to-date with the situation with respect  
25      to the proponent.

1 MR. B. CAMPBELL: Thank you, Mr.  
2 Chairman.

3 After reading last Friday's Globe and  
4 Mail article in connection with the proposal that we  
5 circulated to the parties and to the Board, I feel I  
6 should start by adopting the words of Mark Twain in the  
7 famous cable that he sent to the Associated Press from  
8 London in 1897, and paraphrased, that cable read as  
9 follows: The reports of our death are greatly  
10 exaggerated.

11 What is before you is not a proposal to  
12 end this hearing; what is before you is a proposal  
13 which is quite normal in the course of environmental  
14 assessment hearings, particularly large hearings, to  
15 have the parties get together to try and reduce,  
16 perhaps, some of the scope of the issues that need to  
17 be dealt with at this time, and try and add, through a  
18 settlement process, greater efficiency to the  
19 proceedings.

20 Now, over the course of this fall a  
21 number of circumstances have come together which have  
22 lead to my bringing before you the proposal set out in  
23 my letter to Ms. Morrison of November 10th. I want to  
24 address these really in three groups. I want to  
25 address, perhaps, some of the relevant background

1       considerations. I want to just briefly describe a  
2       number of related steps that are now being contemplated  
3       in the course of the hearing that I believe bear on  
4       this matter. I want to describe the proposal itself  
5       which comes before you with the support of Ontario  
6       Hydro, Northwatch and a number of other parties.

7                 In doing that, I will address some of the  
8       questions in the Board's letter.

9                 Now, I should briefly recount what I see  
10      as the relevant background to this. As the Board is  
11      aware the Update was filed in early 1992 and as part of  
12      that Update, Ontario Hydro withdrew its request for  
13      approvals relating to major fossil and nuclear  
14      facilities, but maintained its request for approvals in  
15      relation to Manitoba transmission, and the requirement  
16      and rationale for hydraulic capacity and energy in the  
17      range specified and its associated radial transmission.

18                As the Board asked me recently and as I  
19      advised the Board recently, none of the more recent  
20      development have led Hydro to seek any further change  
21      to the approvals request set out in the Update which is  
22      Exhibit 452.

23                However, there have been some changes in  
24      circumstances and certain others are fast approaching.  
25      I would like to outline these for you.

1                   I think the pertinent ones are, first,  
2           Ontario Hydro's request to Manitoba to defer the taking  
3           of power under the contract and the Board will be aware  
4           that an initial response from Manitoba Hydro is  
5           expected later this month.

6                   There has been a deferral of the Patten  
7           Post and Little Jackfish projects. These projects are  
8           not before you per se, but only the requirement and  
9           rationale for a range of hydraulic development.  
10          Nevertheless, some parties may view their interests in  
11          this hearing as being affected by the deferral of those  
12          specific projects.

13                   The next item is simply to point out to  
14          you that Hydro's normal planning cycle will result in a  
15          new long-term load forecast being proposed to Hydro's  
16          board, as you have heard in evidence previously that is  
17          done in December, and you will be aware that some of  
18          the material filed indicates that there has been a  
19          reduction in the short-term load forecast.

20                   Perhaps the last item in this character  
21          that I would like to address is to point out that  
22          adjustments have been proposed in certain other areas  
23          of Hydro's business, these include demand management,  
24          non-utility generation, and work is as well going on to  
25          reintegrate all of the developments I have spoken of

1       into Hydro's environmental control strategy.

2                       So there are some changes of  
3       circumstances, as I say, that some parties may see as  
4       affecting their evidence in the course of Panel 2 or  
5       topic 2 and later topics. But I do point out that  
6       Hydro has not amended the request for approvals set out  
7       in the Update.

8                       Now, the second general area of  
9       consideration in all of this against that background of  
10      circumstances is to -- I would like just briefly to  
11      recite, I guess, the circumstances in the hearing that  
12      Hydro found it's facing as it came to the conclusion of  
13      topic 1 and as the fall has proceeded.

14                      First, the ongoing calling of intervenor  
15      evidence, as I say, at least in the eyes of some  
16      parties, the evolution of Hydro's 10-year capital plans  
17      may be relevant to issues being addressed in that  
18      evidence. That is a matter that is going on in the  
19      hearing and I think may be, as I say, relevant to some  
20      parties in light of the positions that they wish to  
21      take before you.

22                      We were also faced with Mr. Greenspoon's  
23      motion on behalf of Northwatch. That motion, in large  
24      measure, relies on the results of the capital program  
25      review to support a motion which I think is properly



1 characterized as a motion for early dismissal.

2 We faced a request from CEG to call Hydro  
3 witnesses presumably so that evidence with respect to  
4 the capital program review results can be put properly  
5 before you as a factual basis for arguing Mr.  
6 Greenspoon's motion.

7 And, Mr. Chairman, you will be aware of  
8 course of your suggestion at the conclusion of the  
9 topic 1 evidence that some consideration might be given  
10 to calling a Hydro panel to speak to any significant  
11 developments since the conclusion of Panel 10.

12 Now, in my submission, all of these  
13 matters are interrelated. It's clear that they all  
14 have to be taken into account in deciding the course of  
15 the hearing no matter what is decided today, and should  
16 be dealt with in some reasonably integrated way.

17 It seemed to Ontario Hydro that in the  
18 current circumstances, some alternative to the formal  
19 hearing of evidence should be considered so that these  
20 kinds of issues could be addressed and, to the extent  
21 possible, resolved in a manner which might permit a  
22 more efficient use of the Panel's time and has the  
23 prospect of leading to an earlier conclusion to these  
24 proceedings. I should say in putting forward this  
25 proposal, on behalf of ourselves and Northwatch, that

1       this is not an unusual --

2                   THE CHAIRMAN: I'm sorry, did you say on  
3       behalf of yourselves? Are you saying that Northwatch  
4       supports the proposal that you are making now?

5                   MR. B. CAMPBELL: It certainly is, if the  
6       adjournment is granted for the purpose of this,  
7       Northwatch and others support this proposal.

8                   THE CHAIRMAN: I thought that all that  
9       Northwatch had done, and perhaps I am wrong and haven't  
10      read it carefully enough, is that Northwatch simply  
11      said they are prepared to adjourn their motion pending  
12      consideration of this proposal. But I didn't quite  
13      understand that they were supporting it.

14                   Is that correct, Mr. Greenspoon, you are  
15      supporting it?

16                   MR. GREENSPOON: Yes, I will make some  
17      submissions perhaps, Mr. Chairman.

18                   MR. B. CAMPBELL: My understanding, Mr.  
19      Chairman, is - and Mr. Greenspoon of course will speak  
20      for himself - but in terms of the proposal to adjourn  
21      the hearings and inquire into whether -- have the  
22      parties inquire into whether some negotiation process  
23      is likely to bear fruit, my understanding was that  
24      Northwatch and a number of other parties that I will  
25      list in a moment, -do in a general sense support taking

1       that tack at this point in the hearing.

2                       The point I would like to make to you is  
3       that this is not at all unusual in an environmental  
4       assessment hearing of this size and magnitude.  
5       Virtually all of the hearings that have been  
6       substantial hearings in the process have at one time or  
7       another paused for some kind of discussions amongst the  
8       parties, whether they were aimed directly at particular  
9       terms and conditions, procedural matters, a variety of  
10      causes, and in my submission, they have proven to be  
11      efficient in terms of overall conduct of the hearing.

12                   Now, with that in mind, I have reviewed  
13      the interest in this alternative approach with various  
14      intervenors, and as discussed with them, the approach  
15      contemplates suspending the hearing of evidence while  
16      parties under some form of direction from the hearing  
17      panel, and I would like to emphasize that, we are not  
18      asking the Panel to simply let us go away unsupervised  
19      for some indefinite period of time. I think there is a  
20      general view that it would be wise for the Board to  
21      maintain some form of direction over this process. And  
22      the process is, as I said earlier, aimed at exploring  
23      the possibility of using an alternative resolution  
24      process with a view to reaching consensus on some issue  
25      and narrowing the scope on others.

1                   Now given that it has not been possible  
2   for me to speak to all of the parties to the hearing, I  
3   have not tried to define a particular form that this  
4   process would take. I have not tried to define the  
5   full range or either limit or expand the range of  
6   issues that might be discussed. I think if the Board  
7   thinks this process might be worthwhile, those are  
8   early issues that would have to be discussed amongst  
9   the parties, I have not tried to settle any of that in  
10  advance because I felt it was important that the widest  
11  possible notice be given that this kind of process  
12  might be taking place before those issues were  
13  addressed.

14                   What I have done is I have attempted to  
15  discern whether there is an interest in an initial  
16  exploration of this approach and I see that taking  
17  place as follows, and it is set in my second page of my  
18  letter to Ms. Morrison of November 10th. What I  
19  suggest is an efficient way to the deal with this  
20  request would be to adjourn the hearing to permit the  
21  parties to meet, to see if an appropriate process can  
22  worked out. Some of the matters which would be  
23  addressed by the parties include the format of the  
24  process, including whether the use of a facilitator  
25  would be beneficial, the timetable and the issues to be

1 addressed within the process including perhaps a  
2 preferred order.

3                   Given the need for people to obtain  
4 instructions, I suggested in my letter of November 10th  
5 that the parties then report to the Board on December  
6 15th on the outcome of these process discussions. The  
7 report would advise the Panel as to whether an  
8 alternative process had been developed and agreed to by  
9 the parties and would advise the Panel of its nature,  
10 scope and schedule. If it was acceptable to the Panel,  
11 the process could then proceed, and if no adequate  
12 agreement had been reached or if the Panel was not  
13 reasonably content with the proposal put forward, then  
14 the Panel would give direction with respect to the  
15 continuation of the hearing.

16                   Now, I am advised that Northwatch is  
17 prepared to have its motion adjourned pending the  
18 initial round of discussions and if we are successful  
19 in putting in place a reasonable process for the course  
20 of those discussions. I do understand that this is  
21 entirely without prejudice to its position in the event  
22 that circumstances lead to the motion being brought on.

23                   We have suggested, after discussions with  
24 Mr. Greenspoon, we have suggested that if no agreement  
25 could be reached on an alternative resolution process,



1       then the motion be argued on December 17th.

2                       Now, simply so that everybody is aware of  
3       the fact, I should also indicate that I have advised  
4       that Ontario Hydro is prepared to consent to reasonable  
5       arrangements with respect to intervenor funding  
6       adjustments to accommodate this process. Again, the  
7       exact form that that might take has not been worked  
8       out. It is my hope that overall this would lead to a  
9       shorter process and would therefore represent a cost  
10      saving to Ontario Hydro, but, of course, I can give no  
11      guarantee for that. I think it is fair that Ontario  
12      Hydro, in putting forward this process, does accept  
13      some of that risk if it, in fact, turned out not to  
14      work as well as we hoped.

15                     Now, against that background, Mr.  
16      Chairman, and the outline of that request, we received  
17      as did other parties and participants, a letter from  
18      Ms. Morrison, dated November 12th, and it set out a  
19      number of questions. In particular A through D in the  
20      middle of the page, I am going to deal briefly with  
21      each of these, I think our position on them is fairly  
22      clear on in light of what we have said already.

23                     Should the motion be adjourned?

24                     In my submission, yes, for the reasons  
25      outlined.

1                   Should subject Panel 2 evidence be heard  
2 as scheduled or postponed pending discussions?

3                   In my submissions it would make sense to  
4 postpone it.

5                   What do the parties expect to accomplish  
6 through discussions?

7                   I think I have addressed that. I think  
8 there is a real potential here for narrowing the  
9 issues, for efficiency in bringing the discussion of  
10 those issues into line with today's circumstances, and  
11 for perhaps even getting some issues entirely off the  
12 table.

13                  I do not think it is realistic to suggest  
14 to you that we could bring forward, in a neat little  
15 package, an entire recommended set of findings and  
16 terms and conditions that would conclude the hearing.  
17 I just don't see that as a realistic objective. And  
18 again, it is not normally the kind of objective that is  
19 put forward in making this kind of proposal in these  
20 kinds of hearings.

21                  What it does do and what it can do, what  
22 is has proven to do is to substantially reduce the  
23 scope of the evidence that the Board needs to hear and  
24 the balance of hearing and it is there that the time  
25 and cost savings are made.



1                   The last particular question: Should  
2           time frames be set for the proposed discussions and, if  
3           so, what they should be?

4                   I believe I have addressed this matter  
5           already. I don't think it is worth trying to speculate  
6           how long negotiations might take, were they to be  
7           approved. I think that suggestion needs to be  
8           developed by the parties during the period that we have  
9           suggested between now and December 15th, at which time  
10          a particular proposal would be brought forward.

11                  Now, I guess the last matter I would like  
12          to address is simply to indicate to you that I have  
13          talked with a great many parties about this proposal as  
14          I have outlined it, and it is limited to trying to go  
15          through this month to see if we can work out a sensible  
16          process. I can say, I think fairly, that there is  
17          general support for this approach from a wide range of  
18          parties. I understand that some of them, many of them,  
19          each have their own particular view as to what sort of  
20          conditions they might wish to proceed under should this  
21          matter proceed, but I think I can fairly say that there  
22          is general support for giving this a shot amongst the  
23          following parties: Energy Probe, Consumers Association  
24          of Canada, the Independent Power Producers Society of  
25          Ontario, the Voice of Women, the Coalition of

1 Environmental Groups, the Ontario Government Ministry's  
2 and Agencies, North Shore Tribal Council,  
3 Nishnawbe-Aski Nation Treaty 3, the Association of  
4 Major Power Consumers of Ontario, and the Public Health  
5 Coalition. There may be others and if I have left any  
6 one off the list who has indicated that kind of general  
7 support for having a run at this, I apologize. I have  
8 been on the phone quite a bit and my notetaking is  
9 sometimes not what it should be.

10 I am aware that there are some parties  
11 that oppose this process and as I am here speaking to  
12 it in support, I will let them identify themselves.

13 Subject to any questions that the Panel  
14 may have of me, those are the remarks which I wish to  
15 make to give some context to the proposal.

16 DR. CONNELL: Mr. Campbell, let me, for  
17 ease of reference, refer to what you anticipate taking  
18 place before December 15th as Phase 1 and what follows  
19 after as Phase 2. I take it it would go without saying  
20 if there were some early outcome either positive or not  
21 in Phase 1, that the parties would so advise us before  
22 December 15th.

23 MR. B. CAMPBELL: Absolutely, there would  
24 be no reason to delay to December 15th simply because  
25 that date had been set.

1 DR. CONNELL: With respect to Phase 2, I  
2 understand your reluctance to speculate on the length  
3 of that process, but let me suggest to you that there  
4 must be at least some minimum investment of time  
5 related to just the feasibility of achieving some  
6 constructive result. Similarly, there must be some  
7 maximum which would strain the reasonableness of the  
8 process in the view of all parties. Could you try to  
9 set some boundary conditions for me?

10 MR. B. CAMPBELL: I think it would be  
11 unrealistic to anticipate that if a process was  
12 approved on December 15th, given that the holiday  
13 season falls immediately thereafter, to have  
14 substantial results in place for presentation to the  
15 Board any earlier than perhaps the end of February. It  
16 might not take that long but there are parties that do  
17 require, fairly so, some time to obtain instructions,  
18 it depends very much on how the course of the  
19 negotiations is. It may be that one does not need to  
20 wait until the end of all of this, one can prove one's  
21 progress as one goes along, in which case it might be  
22 possible to get back to you earlier if we set up a  
23 discrete set of issues.

24 There are different forms that this can  
25 take, and as I say, that I think to me seems realistic,

1 at least at an initial level.

2 If I were the Panel I would be very  
3 concerned if the parties were saying to you that it was  
4 absolutely impossible to contemplate any meaningful  
5 results until six months of negotiations had taken  
6 place. I think you would not want to be in effect --  
7 leave an open-ended negotiation process for anything  
8 like that long.

9 My concept in all of this - and it is  
10 only Ontario Hydro's suggestion and it has to be  
11 discussed with the other parties - is that of the  
12 Board, the Panel obviously would remain actively aware  
13 and in communication with this negotiation process. I  
14 think it would be quite unfair for the parties to  
15 suggest that you simply sit back and give an open-ended  
16 timetable.

17 DR. CONNELL: A follow up question then  
18 focused on your most optimistic scenario. Would you  
19 think then that given a resolution approved by the  
20 Board on or about the beginning of March, that parties  
21 would require a further delay in order to prepare cases  
22 in the light of the redefined scope?

23 MR. B. CAMPBELL: I think, Dr. Connell,  
24 that this is a hypothetical that I can't even begin to  
25 answer.

1 I would hope not, but you know, these  
2 negotiations at least my experience in them, is that  
3 they can be very time consuming. They do occupy a  
4 party's attention fully if they are taking place  
5 properly, and that may have an effect on that outcome.

6 All I can say is that every single party  
7 that I have talked to is dedicated to the proposition  
8 that they do not see this as an opportunity simply to  
9 add time. They see it as, if it's going to be  
10 effective, it's got to have the opposite result and  
11 that is the general wish and I believe that that view  
12 and the efforts would be made in good faith towards  
13 that end. That's my assessment of my discussions with  
14 the other parties. They will, of course, have to speak  
15 for themselves.

16 DR. CONNELL: One further question. You  
17 cited in a general way other hearings where this kind  
18 of pause and re-evaluation had taken place amongst  
19 parties. From your experience can you cite any cases  
20 in which there has been has been such an exercise  
21 conducted when certain parties objected to it?

22 MR. B. CAMPBELL: Could I have just a  
23 moment.

24 ---Off the record discussion.

25 MR. B. CAMPBELL: Excuse me, Mr.



1 Chairman. I just wanted to check with some of the  
2 people who had been on various sides of some of the  
3 other cases that I have been involved in. I don't  
4 think we can identify for you a case where there was  
5 actual opposition to this process by major parties to  
6 those hearings.

7 I think the circumstance, though, is  
8 quite different in those in that the number of parties  
9 is substantially less in terms of the number of parties  
10 that are actively involved in the hearing and would  
11 actively take part in those kind of discussions,  
12 substantially less in most of those other hearings.  
13 And given the number of parties who are active, funded,  
14 in this hearing, I think it is inevitable it was  
15 impossible for us to bring before you unanimity today,  
16 even in a general sense. You have seen various motions  
17 before you on various matters and I think it was  
18 predictable that certain parties would oppose this kind  
19 of process for a variety of reasons.

20 DR. CONNELL: Thank you.

21 MS. PATTERSON: I guess I just wanted to  
22 follow up on the question of other parties who are not  
23 in support and how you would intend to bring them into  
24 the fold or whether you just propose that the Board  
25 order them to co-operate for the month period when you



1 would try to work out your --

2 MR. B. CAMPBELL: I don't think you can  
3 order them to co-operate in the sense of ordering them  
4 to participate in those discussions. There is, in my  
5 submission, a large enough consensus for this kind of  
6 process to make it worthwhile in any event, and if you  
7 permit that consensus to go ahead, then the parties who  
8 have opposed that proposal will have a choice to make,  
9 as to whether they wish to participate or not.

10 I hope, faced with those circumstances,  
11 that they will do the wise thing which is say, fine, we  
12 made our views known but the Board has decided to give  
13 this large consensus an opportunity to prove itself,  
14 and that they would then participate in good faith. I  
15 see nothing that would indicate that they would not.

16 MS. PATTERSON: As I understand your  
17 proposal, your month would be dedicated to working on  
18 process, not any substantive issues and you would not  
19 be intending to use a facilitator or a mediator during  
20 this time but only after that period?

21 MR. B. CAMPBELL: Again, subject to  
22 sitting down and discussing this with the parties  
23 generally, I think a facilitator would be helpful  
24 almost immediately, and I would hope that the parties  
25 could agree that the Board could be approached to

1       have -- you know, my view is that the parties might  
2       approach you and say we would like that facilitator, in  
3       effect, the Board sponsored. But that's only our view  
4       of it and we haven't had time again to discuss that  
5       level of detail. That's really what we would turn to  
6       almost immediately.

7                       MS. PATTERSON: Thank you.

8                       MR. B. CAMPBELL: My experience is that a  
9       facilitator in any discussions of this type,  
10      particularly where there are multiple parties, is a  
11      very helpful mechanism, but others may disagree, and  
12      there is no perfect wisdom on this matter either.

13                      THE CHAIRMAN: This seems to me to be  
14      something like a scoping session, perhaps on a very  
15      grand scale, and perhaps a scoping session that  
16      involves negotiation of terms and conditions of  
17      approval.

18                      Is that what you see it as being, or do  
19      you see it as being less than that or more than that?

20                      MR. B. CAMPBELL: Yes, it's sort of a  
21      combination of that, given that I don't see it as being  
22      realistic to say that all issues can be agreed to by  
23      consensus and one neat package brought back to you,  
24      then I think it's exactly how you have described it.  
25      We will try to deal with bringing the issues down to

1 more closely reflect today's circumstances, get rid of  
2 matters that may appear to some parties now to be  
3 peripheral, to bring agreements before you where  
4 agreements can be made, and generally focus the hearing  
5 and work towards bringing it to a more efficient  
6 conclusion.

7 THE CHAIRMAN: I think what you have said  
8 early on, that you wanted to emphasize that you saw  
9 some participation by the hearing Panel, and when I was  
10 listening to your overview I wasn't quite sure what  
11 your expectations from the hearing Panel were in that  
12 regard.

13 MR. B. CAMPBELL: My suggestion that I  
14 would like to have the opportunity to discuss with  
15 people here, does relate to having through a  
16 facilitator, through Ms. Morrison, some opportunity for  
17 the group to bring matters to the Board's attention and  
18 perhaps obtain some direction, if there is agreement  
19 that some request for direction should be given. Just  
20 basically to stay in touch, to have the Panel stay in  
21 touch enough with this process so that you have a good  
22 sense of what is going on and are not left in the dark  
23 just merely hoping that this time is achieving some  
24 useful end.

25 My concept is simply based on the premise

1       that you are entitled to be assured that it is actually  
2       achieving something. And that's really what I am  
3       aiming at.

4                   THE CHAIRMAN: Fine.

5                   MR. B. CAMPBELL: Thank you, Mr.  
6       Chairman.

7                   THE CHAIRMAN: I am not quite certain how  
8       we should proceed to make best use of this day, it may  
9       require participation by the panel and there may be a  
10      time when it's useful for the panel not to be present  
11      and the reporter not to be present. But at the moment  
12      I propose to deal with any submissions that people want  
13      to make about what Mr. Campbell has just said, starting  
14      with the people who he has identified as supporting it  
15      in some respects in any event, perhaps not entirely,  
16      then those who oppose it and then anyone else who wants  
17      to add some other comments that they consider to be  
18      helpful.

19                   So I guess, Mr. Greenspoon, you may be  
20      the one that I should ask first because you are the one  
21      who we were here today to hear your motion, but I am  
22      prepared to go in any order that people wish to go in.

23                   MR. GREENSPOON: I have few things I can  
24      say.

25                   When I heard that there was opposition to

1 the adjournment on Friday, Mr. Chairman, I went to the  
2 library to see what I could find on case law on  
3 settlement and unfortunately I didn't find a lot of  
4 case law on judicial interpretation of the concept of  
5 settlement, but I think it is well-known that that's a  
6 direction certainly that the courts are turning to  
7 because of the cost. So I went to Halsbury and I  
8 photocopied a couple of pages from the 4th edition of  
9 Halsbury. I don't propose to cite it, I have given  
10 copies to my friend. I think it is clear that the law  
11 on settlement, that it is something that we should  
12 strive for.

13 In that regard the basis of our motion is  
14 that to continue the hearing was not a good use of the  
15 resources of the Province of Ontario, not a sustainable  
16 use. And we see that Mr. Campbell's proposal, although  
17 certainly not withdrawing the undertaking, we feel goes  
18 a long way towards a more sustainable use of resources,  
19 because we see it basically as narrowing the issues.

20 I wish to answer the four questions that  
21 are put by Ms. Morrison.

22 We are, as I say, supportive of narrowing  
23 the issues. I think with request to question A, should  
24 the motion be adjourned, our position is that it's  
25 Hydro that's asking for the motion to be adjourned and



1 we are consenting to that request.

2 As far as the second question, it is our  
3 position that given our resources, Northwatch's  
4 resources, we could not conduct the hearing of Panel 2  
5 with the attendances and the necessary preparation and  
6 carry on meaningful discussions at the same time.

7 In that regard, I have spoken to my  
8 friend, Mr. Campbell, and I understand he takes no  
9 position on this corollary, but that is that we are  
10 asking that filing dates be postponed, either until the  
11 date that this matter is made return, that is the 15th  
12 to be spoken to, or perhaps - and I know other parties  
13 see this as a better resolution - to a fixed date,  
14 being the first Monday of January, January the 4th.

15 With respect to question No. C, Mr.  
16 Chairman, I think that it is very clear that you can  
17 often do more on consent than you can do by  
18 adjudication, and I think this relates to Dr. Connell's  
19 question that, I think Dr. Connell's question whether  
20 this will lengthen the course of the hearing, the first  
21 answer to that question, the obvious answer is that it  
22 won't, that it can only narrow the issues and shorten  
23 it. But I think that it is important to realize that  
24 some of the issues that may arise in these discussions  
25 might be of a different form than those that we might



1 have anticipated, and that's why it's difficult to  
2 predict that.

3 But I think you as an adjudicator, all of  
4 you as adjudicators will be aware that, as I said,  
5 often on consent you can do more than you can when it's  
6 an adversarial system.

7 As far as the time frames, after  
8 listening to the questions from the Panel, particularly  
9 from Dr. Connell and Ms. Patterson, I would put forward  
10 perhaps a possibility that the first issue might be  
11 whether or not we should have a facilitator and what  
12 the relationship of that facilitator should be to the  
13 Board. That may be a question that we could come back  
14 to earlier than December 15th, with the proviso that  
15 the process be allowed to continue. But I think that  
16 if Mr. Campbell is taking the position that there be a  
17 connection between the facilitator and the Board, then  
18 perhaps that's something that the Board could give us  
19 direction on earlier than the 15th of December.

20 I think that given - to go back to my  
21 very first submission - given that we want to get this  
22 hearing over as quickly as possible, and to get as much  
23 out of all we have invested in this hearing as we  
24 possibly can, we would like to see these procedures go  
25 as smoothly and as quickly as possible.

1                   Just one last point relating to Ms.  
2       Patterson's question about what about those, how do you  
3       bring those that are opposed to the process into the  
4       fold. That's the reality of the legal process. You  
5       get a ruling either for you or against you and you  
6       abide by it, and this Board has a lot of discretion and  
7       a lot of power, and I think we have had some decisions  
8       that we didn't totally find went our way, but once a  
9       decision is made, the parties accept it and proceed  
10      with those decisions.

11                   Those would be my submissions.

12                   THE CHAIRMAN: Mr. Grenville-Wood, are  
13      you supporting Mr. Campbell's position?

14                   MR. GRENVILLE-WOOD: Thank you, Mr.  
15      Chairman, Members of the Panel.

16                   I wanted to indicate earlier on in the  
17      proceedings that the Solar Energy Society and the  
18      Coalition of the Cultural Survival and Sierra Club are  
19      in favour of this approach.

20                   It seems to us very clear that in light  
21      of the circumstances that have changed that Mr.  
22      Campbell has alluded to, that if we were to proceed in  
23      the normal course of events, there is a very strong  
24      case to be made to hear further evidence from Hydro as  
25      you yourself have indicated, and that that further

1 evidence be subjected to further cross-examination, and  
2 that in and of itself would prolong the hearing some  
3 further time, and at the end of that process it's not  
4 unlikely that we would be having further changes with  
5 the updated new long-term forecast coming out, and so  
6 on, and all those can now be melded into a negotiating  
7 process where those new factors can be put on the table  
8 in the discussions without necessity to have them put  
9 in evidence in the formal sense and without necessity  
10 to have them opened up to cross-examination. It seems  
11 to me that that would be a fair and open way for us to  
12 be able to address those circumstances and see if we  
13 can't come to some sort of consent on a number of the  
14 issues, on at least defining what those issues are and  
15 the impact they have on the process that needs to be  
16 finalized.

17 It seems to us that it is almost  
18 essential to foresee and the immediate naming of  
19 someone as a facilitator, or preferably I would call it  
20 a mediator who can play a more active role in bringing  
21 the parties together.

22 I see nothing intrinsically wrong with  
23 some of the parties at this stage indicating that they  
24 are not in favour of the process but that they at least  
25 be allowed the option to examine in this period between

1       now and December 15th, the option of being persuaded  
2       that it is a useful procedure to undertake. And then I  
3       suppose we will have to jump off the bridge as to  
4       whether we undertake a full blown mediated process  
5       after December 15th when we report back as to whether  
6       this has worked.

7               It seems to me that issue need not be  
8       addressed today, but let us try and see whether we can  
9       get something out of the process between now and  
10      December the 15th, and report back. And it seems to me  
11      it's essential, and I repeat myself, that someone be  
12      named at the earliest possible time. It seems to me  
13      the fairest and most obvious way for it to work would  
14      be for that facilitator or mediator to be named under  
15      the authority of the Board, then there is no question  
16      as to the impartiality of that individual, there is a  
17      no question as to how and to whom that individual is  
18      ultimately answerable, and that in itself, although you  
19      don't want to get into the nitty-gritty of the  
20      negotiations, indicates the continuing interest of the  
21      Board in this procedure. I think that would make a lot  
22      of sense.

23             The final point I think is that obviously  
24      with respect to the Panel 2 matters, Intervenor Panel  
25      2, it doesn't make any sense if we are to put 100 per

1 cent of energy between now and December the 15th in  
2 this process, to also be trying to prepare witnesses  
3 and to proceed and participate in a formal process.

4 So I would be very strongly in favour of  
5 adjourning Panel 2 as well until December the 15th and  
6 to set a date for it, if that is necessary at that  
7 time, or to continue the adjournment of those panels,  
8 Pending the outcome this process.

9 Finally, within respect the filing dates,  
10 I want to let you know that we are ready to file, but I  
11 can understand why others may not want to do it, they  
12 might be going through of through their final  
13 iterations at this time, and we want, I think, to give  
14 this process the 100 per cent attention, and the ones  
15 who are still going through final iterations are  
16 probably going to be the major players in this  
17 negotiating process. It would make sense I think to  
18 delay the filing dates at least until shortly after the  
19 December 15th go or no go date.

20 I think as a final point, it's really  
21 important, although Hydro is not changing the approvals  
22 they are seeking, I think the policy context in which  
23 those approvals are being sought are fundamentally  
24 changed. Either we are going to have those fundamental  
25 changes discussed in the formal hearing process, or we



1 are going to discuss them in an informal negotiating  
2 process. There is no way we can avoid discussing and  
3 having input into them, and I think it seems to make a  
4 lot of sense to us that the informal process would  
5 certainly allow for a great more profitable use of the  
6 time.

7 Thank you, Mr. Chairman.

8 THE CHAIRMAN: Mr. Shepherd?

9 MR. SHEPHERD: Mr. Chairman, we sent a  
10 letter to the Board making some detailed submissions on  
11 this matter and so I am not going to repeat those  
12 today. Mr. Campbell and a couple of others have  
13 received copies of that letter and there are copies  
14 available for anybody else who wants them.

15 I do want to make a couple of comments  
16 not referred to in there.

17 First, I guess the basic practical  
18 reality from our point of view seems to be that there  
19 is a consensus that some form of follow on process is  
20 required after this hearing, it's been referred by most  
21 people as some form of IRP process. The implication of  
22 that is the nature and the certainty, the extent to  
23 which we can rely on such a process existing, has a  
24 substantial effect on how we treat this hearing. For  
25 example, do we have to nail down every issue, do we



1       have to have debate ad nauseum every issue in this  
2       hearing, or can we say, listen, let's only deal with  
3       the ones that are most material and have the most  
4       immediacy, the more general issues perhaps, and relying  
5       on the fact that there is going to be some further  
6       process in which other issues that can be addressed  
7       later will be addressed later.

8                       It is our view that we can have a debate  
9       in this hearing about what that process should be, we  
10      plan to of course, but it's probably much more  
11      efficient for the parties to sit down since they all  
12      agree we should have one and figure out between them  
13      how to do it.

14                     In the first face of this discussion that  
15      Mr. Campbell has proposed, all we are doing is figuring  
16      out are we going to be able to sit down and talk about  
17      it, or are we going to be at each other's throat too  
18      much to do it. If we come to the conclusion, yes, we  
19      can do that, we are going to make a specific proposal  
20      to you: This is what we want to do. You can say at  
21      that time no, what you are proposing is dumb or it's  
22      not going to work, or you can allow that whole area of  
23      the hearing activities to be moved over to that  
24      alternative process.

25                     If anybody suggests this is going to be

1       easy, they are crazy. We have had some attempts at  
2       negotiations at very minor matters in these hearings  
3       and they haven't been a whole lot of fun, even with  
4       people who agree on virtually everything, they are  
5       still arguing about the details.

6               However, when we have a number of people  
7       who want to take a shot at it, who feel that there will  
8       ultimately be a benefit from doing it, it would seem to  
9       me that that is a momentum you wouldn't want to stop.

10              That leads me to a question that Dr.  
11     Connell asked and I guess is sort of underlying this,  
12     and that is what about the timing question, and behind  
13     that is perhaps, is this -- are we talking about taking  
14     this hearing off the rails for a while, in which case  
15     are we going to be able to get it back on the rails?

16              Firstly, we all hope that any process  
17     like this will shorten the process, but that's almost  
18     not the point. It could end up that the process takes  
19     the same time as before, but we could end up with a  
20     better result because the stakeholders form a consensus  
21     on some or all of the important issues.

22              Furthermore, I don't think you should  
23     assume that any negotiations that take place after  
24     December 15th, and we hope there will be some, any  
25     process that takes place after them will be sequential

1 to the hearing, that is it will cause a further  
2 adjournment while we wait that out. I think there is  
3 every likelihood that we will agree that some portions  
4 of that at least will carry on simultaneously with the  
5 hearings, that we will decide, let's put this stuff in  
6 the hearings, let's talk about this stuff in some  
7 alternative dispute resolution process, and they can go  
8 on at the same time.

9           You have asked the question about  
10 opposing parties and I think I echo the comments of Mr.  
11 Grenville-Wood on that, that you hear an order of the  
12 Board, sometimes you like it, sometimes you don't like  
13 it, but your reaction isn't to take your toys and go  
14 home or try to undermine the Board's order, your  
15 reaction is do the best you can with what you are  
16 ordered to do.

17           We take no position on the question of  
18 whether the filing should be deferred. We are I think  
19 in a position to file at the current deadline, but we  
20 know that there are quite a number of other parties  
21 that will have a problem with that if we are very  
22 intense into discussions over the next two or three  
23 weeks.

24           And finally, on the four questions that  
25 you have asked, obviously on the first two questions,

1 we believe that the motion should be adjourned and the  
2 Panel 2 evidence should be adjourned.

3 With respect to what the parties expect  
4 to accomplish, I think we have dealt with that in  
5 detail in our letter.

6 And item D, should time frames be set, I  
7 think at this point the only time frame that you should  
8 set is December 15th.

9 I think you can legitimately expect that  
10 if we come back to you with a proposal it had better  
11 include dates. If it's simply open-ended we can expect  
12 you to throw it out. However, if it is, we will do  
13 this by this date and this by this date, that would be  
14 reasonable, and then you can make assessment of whether  
15 those time frames are appropriate.

16 So the only time frame I would set today  
17 is December 15th.

18 Those are our submissions unless you have  
19 any questions.

20 THE CHAIRMAN: Thank you, Mr. Shepherd.

21 Mr. Poch?

22 MR. D. POCH: Thank you, Mr. Chairman.

23 For the reasons referred to by the previous speakers,  
24 we are supportive of Ontario Hydro's request, we would  
25 also agree that the sittings would need to be suspended

1 and we would like to see a shift in the filing date,  
2 but we would suggest that the Board does fix a date for  
3 filing, perhaps Mr. Greenspoon's suggestion of early  
4 January. So that if this effort, if the Board should  
5 approve such an effort and if this effort proceeds but  
6 fails by December 15th, we haven't we lost too much  
7 momentum and people will be in a position to carry on  
8 with the hearings. I guess that would put Panel 3A  
9 starting in the last part of January, so an early  
10 filing date for 3A would facilitate that.

11 The only other comment I would make is  
12 that if the Board is not inclined to grant Mr.  
13 Campbell's suggestion, then we would like to see the  
14 motion proceed immediately and we would be in a  
15 position to do that as soon as possible.

16 Thank you, Mr. Chairman.

17 THE CHAIRMAN: Ms. Marlatt?

18 MS. MARLATT: As Mr. Campbell has  
19 informed the hearing Board, the Northshore Shore Tribal  
20 Council, the ECCM and UOI are in favour of entering  
21 into a negotiations process in principle. I would like  
22 to begin with that.

23 We are, however, also in support of NAN's  
24 letter which the Board has received over the weekend  
25 dated November 13th. Now, that letter proposes that --



1 I will just paraphrase it for now, I am sure that NAN's  
2 counsel will refer to it in more detail, but the letter  
3 proposes that the Panel 2 evidence proceed starting  
4 tomorrow, that the witness statement filing date of  
5 December 7th remain, and that the process for looking  
6 into negotiations begin after that date.

7 We would be in support of that particular  
8 proposal for the following reasons: We don't consider  
9 that there is any reason to move in the witness  
10 statement filing date in December. In fact, we think,  
11 if we are all here concerned about delays to the  
12 hearing process, there is every reason to hold to that  
13 date. All parties knew about that date for sometime  
14 now and we have been preparing our evidence certainly  
15 with that date in mind and we are ready to go for that  
16 filing date.

17 It seems to me that the parties who are  
18 prepared to give evidence on Panel 2 are also prepared  
19 to start tomorrow. So we consider that it would be  
20 wise for the hearing to continue for the next month in  
21 that mode, that after witness statements have been  
22 filed by all the parties, at that point it would be the  
23 time to enter into this process that Mr. Campbell has  
24 reviewed with the Board.

25 THE CHAIRMAN: Or the process can be

1 going on in parallel, I suppose that is another  
2 alternative.

3 MS. MARLATT: We have considered that.  
4 We have some concerns with that, Mr. Chairman. It  
5 would be very difficult to be down here participating  
6 in Panel 2 and at the same time have an opportunity to  
7 travel to visit with my clients in the North to talk to  
8 them about what they need to find in the process, what  
9 issues that they need to have reviewed in that process,  
10 whether or not they are in favour of a facilitator,  
11 whether or not they think that should be a  
12 Board-appointed facilitator. Those are very important  
13 questions to my clients, although they are in favour  
14 generally speaking of a negotiations process they still  
15 have some substantial concerns about how that process  
16 would work.

17 It would be almost impossible for me to  
18 be in both places at the same time. It would certainly  
19 be impossible for my clients to be in both places at  
20 the same time, and they are very interested in the  
21 outcome of Panel 2 and this process.

22 DR. CONNELL: Ms. Marlatt, is it part of  
23 your submission then that proposed discussions are not  
24 likely to bear on the subject matter of Panel 2?

25 MS. MARLATT: Well, we consider that the

1 proposed discussions could also bear on the subject  
2 matter of Panel 1, but that's occurred, and we have no  
3 strong feelings about Panel 2 going ahead.

4 What we do have strong feelings about is  
5 the witness statement filing date staying the same.  
6 Now if that stays the same, then we consider it would  
7 probably be wise to start the process for negotiations  
8 after that date, once everyone's witness statements are  
9 filed. It would just make sense to us then that we not  
10 waste hearing time and not use that month in the  
11 meantime for starting Panel 2.

12 But certainly we have no problem with the  
13 witness statement date in December staying the same,  
14 starting the process for negotiations after that date  
15 and not having Panel 2 in the meantime. It's not the  
16 concentration on whether or not we go ahead with Panel  
17 2, it just makes some sense to make up that month  
18 before we get to December 7th with some useful hearing  
19 time, which we are all prepared to proceed on.

20 THE CHAIRMAN: Thank you, Ms. Marlatt.

21 Mr. Mattson?

22 MR. MATTSON: Thank you, Mr. Chairman.

23 Mr. Chairman, as are you aware, my client  
24 has been discussing the scope of this hearing since  
25 funding hearings back in 1990, and has undergone a

1       judicial review and again the scoping hearing back in  
2       February, and yet, Mr. Chairman, we are here before you  
3       again today supporting Ontario Hydro's request for the  
4       adjournment to again try and attempt to scope some of  
5       the issues.

6                 If I might, Mr. Chairman, many of the  
7       parties before me haven't set out exactly what they  
8       expect to get out of the process, but I think that's  
9       something that I wanted to this morning.

10                First of all, Energy Probe supports any  
11       attempt by Ontario Hydro to discuss how the current  
12       circumstances have affected their plans before you. We  
13       also felt that any effort to scope the remaining  
14       issues, Mr. Chairman, at the DSP and discuss the use of  
15       a process to attempt to reach a consensus on some of  
16       the remaining issues would be beneficial in terms of  
17       the time and money that's being spent presently.

18                The rationale, Mr. Chairman, from Energy  
19       Probe's point of view anyway, is that the original DSP  
20       no longer exists as that need for major supply has  
21       disappeared. Mr. Chairman, that need has disappeared  
22       while this hearing has been in progress, and at the  
23       same time debate about Ontario Hydro's future has also  
24       about been going on outside this hearing room, where  
25       many municipal utilities, non-utility generators,

1 business leaders, government representatives, et  
2 cetera, have been discussing some of the issues that  
3 are before you such as demand management, and other  
4 issues such as competition, regulatory oversight of  
5 Ontario Hydro, after the DSP, the ability of  
6 municipality utilities to purchase NUG power directly  
7 from non-utility generators, et cetera.

8 Mr. Chairman, given this fact we would  
9 suggest that the length of time and money that the  
10 province as investigated into this process, the  
11 familiarity of the issues to the Board and to the  
12 parties, that a fruitful discussion can take place  
13 among Ontario Hydro and the intervenors to focus the  
14 remainder of the hearing on the issues that are still  
15 relevant.

16 We no longer feel that the issues for  
17 need for new approvals of major supply options are  
18 relevant at this time. We feel this type of exercise  
19 has little relevancy not only to the current  
20 circumstance of Hydro, but to the circumstances that  
21 are being faced by the customers. For that reason, Mr.  
22 Chairman, we are very interested to know Ontario  
23 Hydro's position with respect to how those current  
24 circumstances affect their plans, to understand what  
25 the government foresees for Ontario Hydro after this



1       hearing, and obviously to understand what issues are of  
2       concern to the parties and that this Board can help not  
3       only the parties with but Ontario Hydro and the public  
4       in general.

5                 Dealing with the final question, Mr.  
6       Chairman, which is the timing for filing and the timing  
7       for returning, we agree with Mr. Campbell's submissions  
8       that December 17th we should be able to come back to  
9       you with an idea of if a process can be a agreed upon.

10                Energy Probe would like to see the  
11       filings of the other parties on all other panels  
12       forthcoming, we filed the material for Panel 1 and for  
13       Panel 2, and we think that most of that work is  
14       probably complete and certainly would aid in any  
15       discussions that may be forthcoming among the parties.

16                So we don't have any objections to a  
17       January 4th date if it needs to be deferred, but we  
18       would like to see that evidence filed and not delayed  
19       for any great length of time.

20                Those are my submissions.

21                THE CHAIRMAN: Thank you, Mr. Mattson.  
22                Mr. Rodger?

23                MR. RODGER: Thank you, Mr. Chairman.

24                As Mr. Campbell advised you, my client,  
25       AMPCO, is supporting Hydro's request for an adjournment

1 of the Northwatch motion on the basis of having a  
2 period of time to see what, if anything, can be  
3 achieved through discussions.

4 I would like to, however, qualify AMPCO's  
5 support for this initiative at this time.

6 What we are saying to you today is that  
7 AMPCO is prepared to come to the table to see what is  
8 being offered and to see what the range of expectations  
9 are amongst the various parties. But we are not  
10 deciding today that we will be involved in the  
11 settlement negotiations.

12 With respect to Ms. Morrison's letter, we  
13 would agree --

14 THE CHAIRMAN: I am not quite sure I  
15 understand. You say you want to come to the table but  
16 not be involved in the negotiations, I don't quite see  
17 how you would make the division there.

18 MR. RODGER: What we are saying, Mr.  
19 Chairman, is that we are prepared to sit down and see  
20 what the range of expectations are for all the various  
21 parties, but we are not saying definitively until we  
22 know that yes, we will be involved in these  
23 discussions.

24 We are prepared to take this adjournment  
25 until December 17th to hear the other parties, to hear

1        what their interests are, and then we will make a  
2        decision whether AMPCO will be involved or not.

3                    Just to expand on that, I have had talks  
4        with Mr. Campbell, I have had talks with a number of  
5        the other counsel for various parties, and there seems  
6        to be quite a diverse range of views about what can and  
7        cannot be achieved. On the one hand there is the view  
8        that perhaps this -- these discussions or settlement  
9        negotiations might yield a scoping or narrowing of the  
10       issues. On the other hand, I have talked to other  
11       parties that see these discussions as a spring board  
12       for a new, an entirely new regulatory regime for energy  
13       planning in the Province of Ontario, and we are  
14       concerned just what this Board can and cannot achieve,  
15       and what can be achieved out of this process. That's  
16       why today I would think that the Government of  
17       Ontario's views would be very important.

18                   But we are saying in the interim we are  
19       prepared to come to the table to hear what everybody's  
20       views are, and as said we would support this  
21       adjournment until December 17th.

22                   With respect to my friend's submissions,  
23       Ms. Marlatt's, we would not only request an adjournment  
24       of Panel 2 as part and parcel of this time to initiate  
25       settlement discussions, but also to set back the filing

1        dates, particularly for the December 7th filing  
2        requirements. AMPCO cannot prepare for cross-  
3        examination of Panel 2, prepare its final evidence for  
4        the December 7th filing dates, and also participate in  
5        these settlement discussions. We can't do all three  
6        things at the same time. So we would foresee  
7        adjourning to the 17th to see what, if anything, can be  
8        accomplished, and then starting up Panel 2 in the early  
9        new year and have that date combine with the date for  
10       filing all the remaining evidence that is currently  
11       being scheduled for December 7.

12                    I would also like to respond to Mr.  
13       Greenspoon's comment that for those parties who do not  
14       agree to be involved in the discussions, that they can  
15       simply follow the Board's directions. To give you the  
16       particulars of a specific concern that arises out of  
17       that for AMPCO, let's say that we participate in these  
18       initial discussions and by December 17th it's clear  
19       that AMPCO doesn't want to participate in them, what  
20       happens to issues where we are doubtful that there  
21       could be any agreement. For example, the seeking of  
22       addition supply approvals at this hearing. Those type  
23       of issues should go back to the Board as soon as  
24       possible if it's realized that there are just some  
25       issues that cannot be agreed upon in any kind of

1 settlement process, and we would submit that those  
2 types of issues should go before the Board as soon as  
3 possible in the new year.

4 We think there is a prejudice if you  
5 decide not to be involved in the settlement  
6 discussions, that there could be some months passed  
7 while discussions among the other parties go on, and  
8 your case is held in limbo. So that would be one  
9 outstanding issue that we feel should be resolved as  
10 early after the December 17th date as possible.

11 [10:12 a.m.]

12 And we think by December 17th, while we  
13 may not have the specifics agreed upon for the type of  
14 process, there should be some kind of general  
15 acknowledgement of what issues are in and what are out.

16 So by that time it's a little bit more  
17 than perhaps what some of the other parties are raising  
18 with you today, that there should be some kind of  
19 indication of the parameters of the expectations.

20 And those are all my submissions.

21 THE CHAIRMAN: Thank you, Mr. Rodger.

22 MS. SPOEL: I have just one brief point.

23 As Mr. Campbell indicated, Voice of Women is supporting  
24 his motion, if it can be put that way.

25 Our only comment is that we do not agree



1       that the Panel 2 evidence should proceed, as some of  
2       the other parties have indicated. It is going to be  
3       difficult to participate in two things at once and  
4       particularly as a part-time party I cannot see us being  
5       able to call evidence, cross-examine parties on Panel 2  
6       and also between now and December 15th participate in  
7       any way in the process being suggested by Mr. Campbell.

8               Larger parties may be able to do so, but  
9       we certainly cannot, and we would like to participate,  
10      have the opportunity to participate actively in the  
11      process that Mr. Campbell is suggesting.

12             THE CHAIRMAN: I think falling out of  
13      that assuming - just a moment, Mr. Rosenberg I'll be  
14      right - falling out of that, it just occurs to me that  
15      this is, I can't think and I don't know if anyone else  
16      can of any more ambitious proposal that 100 or more  
17      parties with a myriad of issues can in some way resolve  
18      those, but maybe, maybe it's worth a try.

19             But at the very beginning you have to say  
20      that there has to be some discipline imposed and, that  
21      is, I think that it isn't that everyone says their  
22      piece this morning and then goes home and waits for  
23      December 15th. I think that there are going to have to  
24      be days set aside in which people have got to be here,  
25      if they want to participate. We have got to have some

1 kind of discipline of that nature.

2 I know some parties have difficulties  
3 getting instructions, but they have just got to get  
4 them, and they have got to be here prepared in some  
5 kind of communication with their client so they can get  
6 those instructions, otherwise the process has no chance  
7 of being successful.

8 I am only speaking for myself when I say  
9 that, but if the thing is going to be done at all there  
10 has to be some kind of discipline imposed on the  
11 process.

12 And so that if, for example, Panel 2 does  
13 not go ahead, that doesn't mean that tomorrow we may  
14 not be back here again working on this proposal.

15 Mr. Rosenberg.

16 MR. ROSENBERG: Thank you, Mr. Chairman.  
17 I have three brief points to make.

18 The first is my client's, Consumers  
19 Association of Canada's, first priority is to get a  
20 decision out of this process and having said that, we  
21 would be opposing Mr. Greenspoon's motion if it was  
22 being argued today but we are supporting an  
23 adjournment.

24 The reason is that we feel a one-month  
25 adjournment with a disciplined timetable will help us

1 understand the relevance of the remaining part of this  
2 hearing, in fact, find out where we are now, where we  
3 have come from, and where Hydro intends to go with this  
4 hearing.

5 To put that in perspective, two years ago  
6 we argued in our opening statement that an all-price  
7 case was relevant in this hearing and at that time we  
8 were in, according to Hydro, an imminent supply of  
9 shortage, now we appear to be in a supply surplus and  
10 we would like to understand how Mr. Greenspoon's very  
11 valid point relates to the issues that the CAC is  
12 interested in.

13 So, having said that, we are interested  
14 in an adjournment for a month, but I have a narrower  
15 view than other people. My view would be the month is  
16 to determine if a settlement can be reached on the  
17 motion itself. People are talking about very large and  
18 complex issues and I would use Mr. Greenspoon's motion  
19 as the document to be negotiated and facilitated.

20 I agree with the concern you just raised  
21 about a never-ending process of mediation. I've been  
22 involved in mediation recently as last week with two  
23 parties, never mind 150 parties, and after three days  
24 we didn't get anywhere, it was a without prejudice, off  
25 the record mediation.

1           If you complicate that by the number of  
2 parties here it is a very daunting prospect. So my  
3 suggestion would be that we use the motion itself as a  
4 mediation document to focus parties' attentions and if  
5 something else can come of it, fine.

6           As to the third point, the length of the  
7 hearing, and Dr. Connell's question, I'm at a loss to  
8 understand how this would shorten the hearing.  
9 Unfortunately, my clients would like a decision as soon  
10 as possible.

11           I think the most compelling argument is  
12 that this would lengthen the hearing and, if  
13 successful, that is, if we get into Phase 2, if we get  
14 through Phase 1 and see no hope of a narrowing of  
15 issues, I expect it will have little impact on the  
16 length of the hearing, but if we do get into a Phase 2  
17 it will lengthen it because the issues will have  
18 changed. Nobody has a crystal ball, but I thought I  
19 would put that up front.

20           For our client alone new work would have  
21 to be undertaken in the context of a new case; if we  
22 are dealing with the old case, then I imagine after  
23 December 15th we will just pile on through the  
24 evidence.

25           Thank you.

1 THE CHAIRMAN: Thank you, Mr. Rosenberg.

2 Ms. Kleer?

3 MS. KLEER: I shall be brief. Ms.

4 Marlatt has already spoken to my letter but I would  
5 like to point out a few matters.

6 First of all, in the listing of parties  
7 in general support Mr. Campbell cited NAN and Treaty 3  
8 and did not cite Moose River James Bay Coalition, they  
9 are also in support of this.

10 With respect to the filing deadline  
11 question, we have made the submission in our letter  
12 that we would like to keep the filing deadline and I  
13 would just like to address that briefly.

14 One of the reasons for that is the lost  
15 time and money in preparation of evidence that we think  
16 would happen if there were a hiatus. Secondly, with  
17 respect to moving the date somewhat ahead to early  
18 January, that poses a few practical problems, one being  
19 that consultants tend to take holidays and we are not  
20 going to be able to get instructions from them and get  
21 things finalized I think very easily between December  
22 15 and January 1st, and then also with respect to our  
23 clients, it's difficult to get them in the holiday  
24 season to participate in that. So I see some  
25 difficulties with moving the filing deadline up



1 slightly.

2           The second point of our letter was that  
3 we need time, we can't simply begin on November 16 to  
4 get into this, even the first phase, because we need to  
5 get instructions from our clients specifically with  
6 respect to the matter of what issues are going to be on  
7 the table, not only the process, but the issues that  
8 will be on the table, and we have for that reason  
9 suggested that it would be useful also to begin after  
10 the December 7th filing deadline.

11           The third point that we - not the third  
12 point - another point that I just want to raise with  
13 respect to the matter of getting instructions, you have  
14 mentioned that we need to get instructions and of  
15 course that is very true. We have suggested in our  
16 letter, and I have spoken about this briefly with Mr.  
17 Campbell, that for our clients who live in the north  
18 some form of arrangement with respect to travel and  
19 accommodations will have to be made so that they can  
20 effectively participate in round one of the  
21 negotiations.

22           Finally, with respect to the matter of  
23 going ahead with Panel 2, our submissions were not that  
24 we thought that we should proceed with Panel 2, rather  
25 that we are prepared to, if we have to. We are

1 concerned about lost time and money because we have  
2 already got our witness ready to go and I would  
3 emphasize that we need to advise her. She is going to  
4 be driving here tonight unless we can get instructions  
5 to her very shortly.

6 So those are my submissions, and if there  
7 are any questions I would be happy to answer them.

8 THE CHAIRMAN: No, thank you.

9 MS. KLEER: Thank you.

10 THE CHAIRMAN: Except for the Government  
11 of Ontario we have heard from all the parties who were  
12 on Mr. Campbell's list.

13 Is there any other party who wants to  
14 join that list? Mr. Colborne?

15 MR. COLBORNE: Thank you, Mr. Chairman.

16 My client, the Nipigon Aboriginal  
17 Peoples' Alliance is generally in support of Mr.  
18 Campbell's proposal. He called me a week ago Friday to  
19 discuss it and he happened to call just on a day when  
20 the NAPA steering committee was meeting, so I think he  
21 got an earful back and, for that reason, excluded us  
22 from the generally in support list.

23 MR. B. CAMPBELL: No, no. It was  
24 entirely an oversight, I had intended to mention you.

25 MR. COLBORNE: In any case, I did want to

1     advise the Board very briefly of what that earful was  
2     comprised of because I think we have some legitimate  
3     concerns about the proposal that might as well be put  
4     on the record now, particularly from the point of view  
5     of the smaller parties.

6             I haven't spoken to any of the other  
7     smaller parties about this so they may or may not adopt  
8     our thinking, but it is as follows:

9             The beauty of a formal adversarial  
10    process such as the one that has been commenced is that  
11    a small party, at least for a short time, gets your  
12    undivided attention. The difficulty of a negotiating  
13    maelstrom which is being proposed is that the small  
14    parties might get left out and, in effect, hung up to  
15    dry.

16            If Ontario Hydro gets its satisfactory  
17    solutions with its principal adversaries, it might come  
18    back here and say: Well, we now support the motion, we  
19    have got our serious problems out of the way, to heck  
20    with those little people up north. Now, I don't think  
21    Ontario Hydro is that cynical but I have to say that it  
22    could happen.

23            However, I think it's more likely that it  
24    could happen something as follows:

25            There are issues which would arise in the

1 formal course of this hearing which the Board would  
2 have to decide on, particularly questions where  
3 evidence is admissible, for instance, but it may be  
4 arguable whether this Board should impose terms and  
5 conditions, for instance, at the end of the day  
6 relating to that evidence.

7 Now, in negotiations it would be  
8 available to some of the parties, certainly to Ontario  
9 Hydro, to say: Well, that is a difficult question, we  
10 can't decide anything like that here in these  
11 negotiations so those questions should get shifted  
12 right off the table, right off the negotiating table.

13 I could illustrate this with an example.  
14 My client has said from the beginning that we want to  
15 deal here with the fact that hydraulic NUGs are not  
16 environmentally assessed.

17 Now, I think that this Board would hear  
18 evidence about that problem, whether or not at the end  
19 of the day you decide that it is appropriately a  
20 subject matter for your order is an entirely different  
21 question.

22 However, in negotiations it would be  
23 available to Ontario Hydro or some other party to say  
24 merely because you, NAPA, or some other party could  
25 present evidence on this subject matter to the Board

1 does not mean that we are going to sit and negotiate  
2 seriously with you about the appropriate settlement of  
3 that type of problem because we don't think that, at  
4 the end of the day, the Board would do that. That is  
5 one type of problem.

6 Another type of problem is more purely  
7 jurisdictional. I will give the example of Treaty and  
8 Aboriginal rights under Section 35 of the Constitution.

9 I think that some parties will be, at the  
10 end of the day, in legal argument here, if we ever  
11 reach that stage, be saying that you ought to take into  
12 account that matter and you ought to make certain types  
13 of orders.

14 I also expect that Ontario Hydro at the  
15 end of the day might well be saying: No, that is not  
16 within your jurisdiction or within the terms of  
17 reference of this hearing and you should not. It would  
18 be a purely legal argument at that point in time.

19 The danger, as I see it, in this  
20 negotiation proposal is that Ontario Hydro could in  
21 effect arrogate to itself the ability to impose that  
22 final decision and simply say, our position is that, as  
23 a matter of law, the Board cannot do that so,  
24 therefore, we are not even going to talk to you about  
25 it. And I don't think this is a purely speculative



1       problem because I have seen it happen.

2               So I wanted to put on the record our  
3       concerns in that regard. But still we are, you know,  
4       quite proposed to enter into the process that is being  
5       proposed as long as the assumptions and principles that  
6       commence it are that basically everything is on the  
7       table, everything that could be before the Board must  
8       be on the table in these negotiations.

9               Just a couple of points about time frames  
10      and so on. We would suggest that the period from now  
11      until December 17th is a rather important one and if  
12      you decide not to hear the Panel 2 evidence we would  
13      suggest that you make yourself available for  
14      representations from any party on notice, but on very  
15      short notice, as to how this process is emerging.

16              If a group of parties, for instance, in  
17      the first week or so, say: Well, this is just  
18      ridiculous, the positions that some of the parties are  
19      taking are such that we will never by December 17th  
20      come up with anything, I would suggest that maybe the  
21      parties should have a right to, on short notice, come  
22      back and explain the problem to you and you could hear  
23      the representations as to how the developments have  
24      gone and what the problems are and perhaps provide  
25      further direction in that manner.

1                   On the question of a facilitator, we are  
2       skeptical about the role of a facilitator because of  
3       the size of the number of issues and the difficulty of  
4       the issues. We think that any single facilitator might  
5       very quickly be struck by a serious overload problem  
6       and, therefore, only able to deal with the issues that  
7       Ontario Hydro would identify as the principal issues  
8       and the less central issues just might go by the  
9       boards.

10                  Also we are concerned just generally that  
11       a facilitator might merely be another layer in a  
12       bureaucracy and that if the parties can't take care of  
13       themselves with the right to come back before the Board  
14       for further directions then it may be that a  
15       facilitator is a rather redundant position.

16                  In terms of filing dates and so on, we  
17       like other parties would not be able to participate in  
18       the process between now and December 17th that has been  
19       suggested and complete our filings. We are stretched  
20       to the limits just at this point in time. We would  
21       suggest that an early January filing date for Panel 3A  
22       is, in fact, a reasonable suggestion and will not  
23       necessarily upset any schedules.

24                  Thank you.

25                  THE CHAIRMAN: Thank you, Mr. Colborne.

1 I think we will take -- we have been at it an hour and  
2 a half now. We will take a break for 15 minutes and  
3 come back and Mr. Taylor, you'll be up first.

4 And then, Ms. Couban, would you be  
5 prepared to go after Mr. Taylor?

6 MS. COUBAN: Yes.

7 THE REGISTRAR: Please come to order.  
8 This hearing will recess for 15 minutes.

9 ---Recess at 10:30 a.m.

10 ---On resuming at 10:55 a.m.

11 THE REGISTRAR: Please come to order.  
12 This hearing is again in session. Be seated please.

13 THE CHAIRMAN: Mr. Taylor.

14 MR. TAYLOR: Good morning, Mr. Chairman,  
15 Thank you.

16 Mr. Chairman, I too have been speaking  
17 with Mr. Campbell this past week and I received my  
18 instructions late on Friday and I have not had the  
19 opportunity to convey them to Mr. Campbell, but I would  
20 tell you that my client agrees in principle with the  
21 concept that has been put forward by Ontario Hydro for  
22 what we would call the Phase 1 part of the process, up  
23 to December 15th, and to adjourning the Northwatch  
24 motion until December the 17th. We look forward to  
25 discussion of the process and also the issues that will

1 be on the table.

2 In addition to that, I would like to make  
3 two other brief points. First, we concur with the  
4 position that the Voice of Women have put forward, that  
5 for a part-time party it is simply not possible to  
6 participate effectively in both the negotiations  
7 process that would be going on and the Demand/Supply  
8 Plan hearing at the same time. So, therefore, we would  
9 suggest that you do adjourn Panel 2 and you do extend  
10 the filing dates.

11 The second point I would also like to  
12 concur with is the issue with regard to the practical  
13 issue of getting instructions and also the travel  
14 arrangements that are necessary for northern parties to  
15 be able to participate in the process, and that's just  
16 one of the practical things I would like to raise now  
17 before we get into that situation if we do.

18 Those are my submissions at this time,  
19 Mr. Chairman. I would be happy to answer any questions  
20 that you may have.

21 THE CHAIRMAN: Thank you, Mr. Taylor.

22 MR. TAYLOR: Thank you.

23 THE CHAIRMAN: Ms. Couban?

24 MS. COUBAN: Mr. Campbell advises me that  
25 Pollution Probe apparently supports this concept of

1 discussions in principle and we were just wondering if  
2 there was a representative here to speak to that this  
3 morning?

4 THE CHAIRMAN: Mr. Lourie.

5 MR. LOURIE: That's correct, I think we  
6 were one of the parties that didn't quite make it into  
7 Mr. Campbell's notes.

8 Pollution Probe does support the proposal  
9 by Ontario Hydro, we also support not proceeding with  
10 Panel 2. It would be difficult for us to  
11 participate -- although we are not in Panel 2, it would  
12 be difficult for us to keep up on the issues in Panel 2  
13 and participate with the negotiations and we also  
14 support the delay of filing dates.

15 Thank you.

16 MS. COUBAN: Thank you, Mr. Chairman. As  
17 Mr. Campbell has indicated, the Government ministries  
18 and agencies do support in principle the entering into  
19 discussions outside of the formal hearing process.

20 With respect to whether the Northwatch  
21 motion should be adjourned, my client supports the  
22 adjournment of that motion for the purposes of the  
23 parties entering into a process of discussions with  
24 respect to the DSP issues.

25 We also believe that Panel 2 evidence



1       should be postponed. We believe that this process of  
2       discussion should have the full attention and energies  
3       of the parties as it has the potential to achieve  
4       significant benefits for all the parties and for the  
5       Board at least with respect to the potential shortening  
6       of the time before the Board.

7                       And, on that point, we do disagree with  
8       some of the parties who have suggested that perhaps  
9       these processes for discussion would lead to an  
10      extension of the time that matters to be discussed  
11      before the Board would take.

12                      With respect to my client's expectations  
13      for the discussions, as I have indicated, we support  
14      the concept of discussions amongst parties and, as Mr.  
15      Campbell indicated, we view this process as being  
16      analogous to what happens in other environmental  
17      assessment hearings where, at some stage in the  
18      proceedings, the parties will get together outside of  
19      the formal hearing process to discuss issues with a  
20      view to settling on those matters remaining in dispute  
21      and hopefully to resolve those issues that do not  
22      remain in dispute.

23                      We see these discussions as a means for  
24      scoping this hearing and for scoping the issues that  
25      are alive at this hearing.

1                   THE CHAIRMAN: And they are what, alive  
2           did you say?

3                   MR. COWAN: Alive at this hearing. And  
4           on that basis we are prepared to meet all the parties  
5           at the discussion table.

6                   With respect to the timetable, my client  
7           is concerned about maintaining the momentum of this  
8           hearing. We are concerned about some of the deadlines  
9           that we have heard today, particularly with respect to  
10          a suggestion made by Mr. Campbell that perhaps we not  
11          report back to the Board until the end of February, and  
12          a consequent perhaps delay of some weeks, perhaps some  
13          months, with respect to filing deadlines for cases.

14                  THE CHAIRMAN: I didn't quite understand  
15          Mr. Campbell to be saying quite that. He said that the  
16          initial report back would be December 15th and then Dr.  
17          Connell asked him: Well, how did he see it unfolding,  
18          given the possibility of some kind of an arrangement by  
19          that time.

20                  MR. COWAN: Yes.

21                  THE CHAIRMAN: And how long would it take  
22          people to get ready for whatever the new process turned  
23          out to be.

24                  MS. COUBAN: Yes.

25                  THE CHAIRMAN: And he thought the end of

1 February might be a reasonable maximum for that.

2 MR. COWAN: I think I understood that,  
3 Mr. Chairman, but I still have some concerns about  
4 that.

5 And with respect to that, my client would  
6 suggest perhaps that it be appropriate that the parties  
7 report back to the Board in two weeks' time on the  
8 stage of discussions amongst themselves and perhaps to  
9 report back on a specific timetable for future  
10 discussions to discuss back on the matter of the use of  
11 a facilitator, whether such a mechanism is appropriate,  
12 and also to report back on everyone's expectations for  
13 discussions.

14 We are of the view that two weeks is a  
15 reasonable time for parties to get instructions with  
16 respect to these matters. All parties will likely have  
17 a fairly clear idea of their agendas with respect to  
18 these discussions as a result of obtaining instructions  
19 for today.

20 We would also like to urge the Board to  
21 retain the December 7th filing deadline. That deadline  
22 has been a longstanding deadline, all parties have  
23 known about it for several months and presumably all  
24 parties have been working diligently towards meeting  
25 that deadline, therefore, we would suggest that, again

1       for reasons of maintaining the momentum of this  
2       hearing, that that December 7th deadline be retained.

3               Subject to any questions the panel may  
4       have, those are my submissions.

5               Thank you.

6               THE CHAIRMAN: Ms. Couban, just a moment.  
7       One of the problems that have been suggested by some of  
8       the parties - I am first of all again speaking for  
9       myself because I haven't discussed this with my  
10      colleagues - agree that the momentum must be kept up.  
11      If there's any possibility of this process having any  
12      chance of success, there has to be a continuing and  
13      intensive participation. I even feel a little bit  
14      uncomfortable with parties leaving here today and  
15      thinking they have got two weeks. I would hope that  
16      they would be staying here and working today and  
17      tomorrow and perhaps telling us by Thursday of this  
18      week whether there's any possibility of this going to  
19      work or is it not going to work.

20              I am just talking off the top of my head  
21      right now, I am not saying this is what we are going to  
22      do, but there is one difficulty and that is, parties  
23      from remote areas who have trouble with communication  
24      and matters of that kind is, I guess, one of the bars  
25      to that. I don't quite know how that will have to work

1 out.

2 MS. COUBAN: I agree, Mr. Chairman, that  
3 there are certainly difficulties with certain parties  
4 obtaining instructions from their clients, however,  
5 that is why we suggested two weeks. We believe that  
6 that is a reasonable time to obtain instructions on  
7 such a significant matter and, furthermore, we have the  
8 understanding that many of the parties have already  
9 been in touch with their clients with respect to  
10 discussing the concept of these discussions.

11 So I don't think that it will be a  
12 completely new concept for many of the clients. They  
13 will have at least -- their lawyers will have at least  
14 explored the concept of these discussions with them at  
15 this point and in two weeks' time we believe that is a  
16 reasonable period of time in which to finalize their  
17 expectations with respect to these discussions and to  
18 discuss an appropriate time schedule.

19 THE CHAIRMAN: There are two things.  
20 This is analogous I guess to what you are saying. They  
21 have had a long time now to prepare for the December  
22 7th date and similarly this whole matter doesn't come  
23 as a complete surprise, the parties have been thinking  
24 about it and no doubt discussing it with their clients  
25 and have some idea.



1                   I wouldn't think that parties would know  
2    what instructions to seek at this point unless and  
3    until there had been some discussions and some  
4    resolution and some more specific issues put on the  
5    table. I wouldn't know what -- for instance, if I was  
6    talking for a party, what kind of instructions I would  
7    be asking for right now other than do you go ahead with  
8    the process or do you say no and go on with the motion  
9    or do you continue with the hearing. But those are  
10   pretty general questions.

11                  MS. COUBAN: Well, perhaps a starting  
12   point could be, Mr. Chairman, for all of the parties to  
13   get together and, as you have suggested, perhaps even  
14   today would be appropriate. I know that many of us  
15   have certainly set aside this entire day to be here.  
16   So if we do end early perhaps it would be an  
17   appropriate time to meet immediately proceeding the end  
18   of this hearing. I do believe that some parties are  
19   very clear as to their agendas with respect to these  
20   discussions, so perhaps that could be a starting point.

21                  Parties who perhaps do not have clear  
22   instructions with respect to what their clients want to  
23   get out of this process could at least go back to them  
24   with an idea of what other parties are seeking, the  
25   breadths of the issues that some of the parties hope to

1 resolve as a result of this process. So that could be  
2 the starting point for seeking instructions.

3 Thank you.

4 THE CHAIRMAN: Thank you, Ms. Couban.

5 I think, Mr. Mark, perhaps you should be  
6 next.

7 MR. MARK: Thank you, Mr. Chairman.

8 Mr. Chairman, as you know by now from the  
9 letter I filed with the Board late last week, the MEA  
10 is opposed to the process proposed by Mr. Campbell.  
11 And to put the matter in some context, Mr. Chairman, I  
12 think we should recall, even if only briefly, the basis  
13 for the Northwatch motion which is afoot and perhaps to  
14 some extent is the catalyst for these discussions.

15 The essence of the Northwatch motion, and  
16 I view it to a large extent as a logical extension of  
17 the position the MEA took following the Update last  
18 spring, is that on any honest examination of the  
19 proposals now afoot from Ontario Hydro there is no  
20 longer any basis for the continuation of the hearing.

21 To perhaps put in the briefest summary  
22 Northwatch's motion, it is that whatever is presently  
23 being proposed by Ontario Hydro it manifestly is not  
24 the DSP, it is not rationalized on the basis of the DSP  
25 and does not arise out of the DSP. The MEA supports

1       that motion.

2                       In light of that, Mr. Chairman, the  
3       fundamental position of the MEA is that if that is so,  
4       if it is the position of parties who support this  
5       proposal by Ontario Hydro that the hearing cannot now  
6       continue because there is no basis for the continuation  
7       of the hearing and a ruling for this Board, then  
8       logically extending that, there can be no higher  
9       position or higher weight given to a process which  
10      continues based either in whole or in part on some  
11      agreement by the parties to the issues.

12                     Either this Board has before it an  
13      application which qualifies for this Board's review  
14      under the Environmental Assessment Act or it does not.  
15      And if it does not, no degree of co-operation or  
16      discussion or even agreement amongst the parties can  
17      resolve that fundamental difficulty.

18                     So, Mr. Chairman, at the outset I say, at  
19      the very least, at the very least, the Northwatch  
20      motion must proceed before we even consider whether to  
21      give effect to this proposal.

22                     If one reads the Northwatch submissions,  
23      if one reads the CEG submissions, for example, in  
24      support of that motion they say that the present  
25      proposals are not grounded in the DSP; they go further.

1                   Mr. Poch, in his submission, says indeed  
2           it would be dangerous, it would be dangerous for this  
3           Board to make any rulings on the matters purportedly in  
4           issue given the fact that essentially they would be  
5           being considered in a vacuum.

6                   The danger does not disappear, Mr.  
7           Chairman, because they get resolved at a bargaining  
8           table at which Mr. Poch and the other supporters happen  
9           to be present.

10                  As to the process itself, Mr. Chairman,  
11           that is proposed, one must, I think, bear in mind at  
12           the outset again what exactly it is that's being  
13           proposed. What was proposed to the MEA about 10 days  
14           ago, and I gather from listening to submissions of  
15           other counsel this morning it is their understanding,  
16           the centerpiece of these discussions will be  
17           consideration of a future review and regulatory  
18           framework for Ontario Hydro. Let there be no mistake  
19           about it, Mr. Chairman.

20                  THE CHAIRMAN: That's what you say, but  
21           no one else except one other party has said that so far  
22           this morning. I didn't hear Ms. Couban refer to that.

23                  MR. MARK: No, Ms. Couban, does not.

24                  THE CHAIRMAN: I would expect if anybody  
25           was going to suggest that it would have come from the

1 government if that was something that was seriously  
2 being considered.

3 MR. MARK: Well, there's no doubt that  
4 that was certainly the proposal expressed by Ontario  
5 Hydro.

6 Ms. Couban, as I understand, her position  
7 today is that she has no instructions from her client  
8 as to whether that is one of the issues they are  
9 prepared to have on the table or not.

10 THE CHAIRMAN: I may have missed it, but  
11 I didn't hear her say that.

12 MR. MARK: Perhaps she can enlighten us.

13 MS. COUBAN: Mr. Mark is correct, Mr.  
14 Chairman. I have no instructions on that point.

15 My client is agreeing to entering into  
16 these discussions if the focus of them are the issues  
17 presently before the Board. With respect to any other  
18 mechanism, I have no instructions; the discussions of  
19 any other mechanisms, I have no instructions.

20 THE CHAIRMAN: I am not quite sure what  
21 that means. Is it that you sought instructions and  
22 haven't got them, or that you are just not taking a  
23 position. I don't want to put you in any more an  
24 embarrassing position than I have already done.

25 MS. COUBAN: I am not taking a position



1 on that matter, Mr. Chairman.

2 THE CHAIRMAN: All right.

3 MS. COUBAN: At this point. Thank you.

4 THE CHAIRMAN: All right.

5 MR. MARK: Mr. Chairman, I can only say  
6 two things. No. 1, I can only respond to the proposal  
7 as put to me by Ontario Hydro and that was certainly  
8 the essence of the proposal.

9 MR. B. CAMPBELL: Well, just a minute,  
10 Mr. Chairman. I have indicated clearly to my friend  
11 not that Ontario Hydro was for or against any  
12 particular issue. This issue came up in our  
13 discussions.

14 The point I do say about the issues is  
15 that Ontario Hydro was setting no preconditions as to  
16 the range of issues that they were prepared to discuss  
17 in the course of this.

18 This is a matter, as I said in my  
19 submission and I made it clear in all my discussions of  
20 this, I know people have an interest in this, but the  
21 group has to sit down and decide what issues to tackle  
22 and in what order. There was no predetermination of  
23 that in any way by Ontario Hydro and that is the  
24 message I gave to everybody while discussing with  
25 various interested people various potential issues.

1                   MR. MARK: I have no doubt as to what  
2           Ontario Hydro's position is today in light of the  
3           response they have got from some of the parties Mr.  
4           Chairman, but if you have listened at all to the  
5           submissions from other counsel this morning, it is  
6           abundantly clear, and certainly based on my discussions  
7           over the length of this hearing with other counsel, it  
8           is abundantly clear that the only way this proposed  
9           process is going to have any meaningful impact on the  
10          hearing is if it results in consensus on a future  
11          review process which is going to permit the deferral of  
12          some or many of the issues presently before you to that  
13          future process.

14                   If one has read, so much as glanced over  
15          the documentation emanating from Ontario Hydro today  
16          which is behind the capital review, it is apparent,  
17          beyond a shadow of a doubt, that Ontario Hydro is now  
18          in the position where it does not have to and does not  
19          want to deal today with many of the issues that were at  
20          the forefront two years ago.

21                   One does not have to have an advanced  
22          degree in any subject to know that the only way out of  
23          this conundrum is if there is some assurance that the  
24          issues can be dealt with effectively in the future so  
25          that they don't have to be dealt with today.

1                   If the object of the exercise, Mr.  
2           Chairman, was simply to scope the other issues before  
3           you, I question why the great rush to have this today.  
4           For two years we have been having this hearing. We  
5           have been having scoping sessions before every panel.  
6           If we are not talking about consensus of some  
7           fundamental issue which is going to change the whole  
8           nature of this process, there is no need for what is  
9           now proposed.

10                   We have proceeded merrily along for two  
11           years. Every time intervenors raise the protestation  
12           that events and circumstances are changing which  
13           require us the opportunity to change the evidence, to  
14           have Ontario Hydro witnesses revisit the evidence on  
15           matters such as the load forecast, the refrain from  
16           Hydro and the rulings of this Board have consistently  
17           been: This train will not stop to let that reality get  
18           on board.

19                   What has changed. Why now after the  
20           intervenors have invested two years of effort and  
21           money, after we had a lengthy adjournment of months  
22           during the summer when this should have been done  
23           before the intervenors prepare and file the evidence.  
24           What is the point of having it now after we are all  
25           nine tenths of the way along to filing our evidence.

1       Why now propose that suddenly we should discuss the  
2       issues.

3                       Mr. Chairman, my submissions can be fit  
4       into four simple points.

5                       Firstly, the concept proposed by Ontario  
6       Hydro, as I understand it and as I suggest to you it  
7       must be in order to have any effect, is for the purpose  
8       of settling issues which are beyond the scope of the  
9       hearing.

10                      Secondly, the MEA considers that any  
11       initiative to use this private bargaining process to  
12       resolve issues of public policy, issues which are not  
13       technical or factual issues, should be firmly rejected  
14       by this Board.

15                      Thirdly, Mr. Chairman, that on any fair  
16       examination this process is likely destined to fail  
17       and, at the very least, no party can give you any  
18       assurance today that there is even a reasonable  
19       prospect for success.

20                      And, lastly, Mr. Chairman, and certainly  
21       not least from the MEA's perspective, the suspension of  
22       the hearing proposed at this late date is simply no  
23       longer feasible given the nature and shape and  
24       constraints imposed upon our intervention.

25                      Dealing with the first point, Mr.

1 Chairman, I have already addressed it somewhat in  
2 response to your previous question. The issue of  
3 whether a better format or some mechanism can be  
4 devised for really reflecting the reality that  
5 everybody sees that it is no longer appropriate for  
6 this Board to be considering many of the long-term  
7 planning issues. That is something which is an  
8 exercise which can and should be done independent of  
9 this process.

10 As I understand it, it is not before you  
11 to consider or rule upon or to make or certainly to  
12 devise a plan for such a future review process, indeed  
13 it's inimical with what has been proposed by Ontario  
14 Hydro. Ontario Hydro said the growth in electricity  
15 demand and the nature of the projects which had to be  
16 undertaken to meet that demand required a 25-year plan,  
17 a current omnibus review of all these short, medium and  
18 long-term planning issues.

19 And if it is considered that some other  
20 framework is appropriate the parties, including Hydro,  
21 the government and others can deal with those, and if  
22 they can make a determination that this hearing is not  
23 the appropriate forum, they should; but if it is not  
24 one of the issues that the parties were being asked to  
25 make submissions on in this hearing, and certainly



1       there has been no evidence on any of that, then the  
2       hearing should not be suspended to permit certain  
3       parties to negotiate on those issues which are outside  
4       the scope of the hearing.

5               Any effort to construct this future  
6       regime, as wise as it may be, is separate and apart  
7       from this hearing.

8               The second point, Mr. Chairman, or really  
9       related to this point is that the Board should bear in  
10      mind that the time frame being proposed for this is  
11      really quite unreasonable. Any proposal to put in  
12      place a future process which will permit the regular  
13      review of some of these planning issues must go through  
14      the usual public review and legislative process before  
15      it comes anywhere's near fruition. That is a time  
16      frame which we all know extends beyond any type of time  
17      frame which will permit this hearing to be stood down  
18      and resumed in any feasible sense.

19              And it is a pipe dream, in my submission,  
20      Mr. Chairman, for anybody to argue that the parties can  
21      deal with those issues within a couple of months and  
22      come to a conclusion which has the necessary sanction  
23      and approval from the legislature of this province  
24      within a reasonable time frame.

25              The second point, Mr. Chairman, is that

1 given the nature of the issues to be reviewed and  
2 decided at the hearing, it is inappropriate for those  
3 issues to be determined by private negotiations amongst  
4 the parties even under the auspices of the Board.

5 Even if we accept for the purpose of  
6 argument that this future review framework is not one  
7 of the issues to be dealt with, what are the major  
8 issues in this process. They are not site-specific  
9 issues, they are not, as your Lordship has been at  
10 pains to point out to the parties throughout the  
11 hearing, at a level of detail. They are the broad  
12 fundamental planning level questions; such as: Should  
13 one target electricity demand or should one forecast  
14 demand, should one monetize environmental  
15 externalities, is the exploitation of northern  
16 resources for the benefit of other regions of the  
17 province an appropriate strategy, is Ontario Hydro's  
18 proposed \$6 billion subsidization of energy  
19 conservation an appropriate public expenditure, is  
20 nuclear power an appropriate generation source for  
21 Ontario Hydro.

22 This is a short and by no means  
23 exhaustive but, in my submission, illustrative list of  
24 the issues which are prominent before you.

25 These issues, Mr. Chairman, in my

1 submission, are precisely ones which must and should  
2 only be resolved upon a full public record with full  
3 evidence, full debate and, most appropriately, reasoned  
4 consideration and decision of this Panel.

5 [11:25 p.m.]

6 We have heard from the outset, when the  
7 intervenors applied for intervenor funding how  
8 essential it was for there to be the public airing of  
9 the evidence on these issues. The Board in its various  
10 scoping rulings has pointed out time and time again  
11 that it is essential to your enterprise that you engage  
12 for the benefit of the public in the debate and review  
13 on these fundamental issues.

14 In my submission, it would be wholly  
15 inappropriate for this Board to authorize the parties  
16 to this hearing to endeavour to come to some consensus  
17 position or unanimous position on these issues, have  
18 those essentially embodied in some report which will  
19 not, which will not result in this Board giving its  
20 independent views on the basis of a full evidentiary  
21 record.

22 There are no issues between the parties  
23 here. Unlike what Mr. Greenspoon submits to you when  
24 he puts Halsbury's before you, this is not a private  
25 dispute between parties where the tribunal should be

1 indifferent to the resolution they come to, or the  
2 tribunal should even encourage that process. These are  
3 public policies questions and it is inconceivable, with  
4 respect, Mr. Chairman, that after having had this  
5 expenditure pursuant to the so many exhortations of the  
6 parties, that this Board is going to provide a document  
7 which will form the basis for guidelines and standards  
8 for future generations to come, that the same parties  
9 should now advocate essentially the shortening, the  
10 truncation of that process in the interests of  
11 expedition, expedition which is not going to happen.

12 That record, as it will be produced in  
13 the most optimistic view of the proponents of these,  
14 will not be the product that this province has paid so  
15 many hundreds of millions of dollars to achieve.

16 I remind you, Mr. Chairman, that when the  
17 Update was produced last February and it was apparent  
18 that with the revised approvals that decisions of this  
19 Board on certain issues such as the role of nuclear and  
20 fossil, where those issues were no longer a necessary  
21 part of the application, it was Ontario Hydro that  
22 invited this Board to consider and give Ontario Hydro  
23 and the public the benefit of the Board's views. They  
24 said we want your views on demand management, we want  
25 your views on what the future role of nuclear should

1 be. Now they come before you and say, essentially your  
2 views are no longer what we seek.

3 The third point, Mr. Chairman, is that  
4 the process most assuredly is not going to be  
5 successful. I have already reviewed in only a brief  
6 list some of the essential issues which we have before  
7 us in the hearing. Do we target our forecast? What is  
8 the role of nuclear? What do we do with the proposal  
9 to exploit Aboriginal resources for the benefit of  
10 others?

11 It is inconceivable, Mr. Chairman, that  
12 there will be ever be consensus on these fundamental  
13 issues amongst the parties to these hearings. It is  
14 simply, if one looks at it fairly and honestly  
15 inconceivable. And if the object of the exercise is to  
16 try and deal with the more subsidiary issues, then we  
17 are not going to be achieving any saving of time or  
18 argument that's going to be of benefit to anyone.

19 Unless a large number of these  
20 fundamental public policy issues can be resolved by  
21 this process, we are better off, in my view, Mr.  
22 Chairman keeping our nose to the grindstone and going  
23 ahead, because unless we resolve of a great number of  
24 them, the evidence is not going to be substantially  
25 shortened, argument will not be substantially



1 shortened, and most importantly, your job in terms of  
2 giving careful consideration and making determinations  
3 on these issues is not going to be substantially helped  
4 whatsoever.

5 Fourthly, Mr. Chairman, there is the  
6 issue which I say is an important issue of how fair and  
7 feasible this proposal is to intervenors. I won't  
8 speak for others, I will just speak for the MEA.

9 This Board has published a schedule for  
10 the completion of these hearings. The Board has told  
11 the parties in no uncertain terms that there is going  
12 to be no significant extension of intervenor funding to  
13 bring this process to a conclusion.

14 The MEA has agreements and arrangements  
15 with its professionals and experts which are founded  
16 upon this hearing proceeding more or less as scheduled  
17 to the completion.

18 The Board will know, for example, that  
19 parties to this hearing have full-time people engaged.  
20 We have experts engaged with particular deadlines and  
21 particular filing and testimony dates.

22 Even if intervenor funding is provided  
23 for those who might actually participate in these  
24 discussions, who is going to pay for all the other  
25 costs thrown away while we wait for this process to

1       come to some conclusion maybe a month from now, maybe  
2       two months from now, maybe three months from now? Who  
3       is going to pay for the full-time staff who are  
4       dedicated to this project? And then who is going to  
5       pay for the reworking of the interventions? Who is  
6       going to pay for the changes in the evidence? Who is  
7       going to pay our consultants not just to finish and  
8       file their evidence, but to advise us during these  
9       discussions, which will go on for many weeks, about  
10      resolution of the technical issues?

11               This proposal, Mr. Chairman, comes at the  
12      11th hour in a hearing where there is no reason why if  
13      there were any serious intention to resolve the issues,  
14      it could not have been done earlier.

15               After months of Hydro and this Board  
16      being most diligent in ensuring that this hearing  
17      proceed inexorably toward a conclusion, regardless of  
18      changes in circumstances, it is simply unfair to put  
19      the hearing on a completely different footing at this  
20      point in time.

21               Mr. Campbell in his submissions this  
22      morning, indicated to you he thought this process and  
23      the resultant adjournment was appropriate because he  
24      said there have been evolving facts and circumstances  
25      that the parties will want to address in their

1 evidence. Mr. Chairman, this a position which I think  
2 has to be rejected.

3 As I indicated before, it has been  
4 Hydro's consistent position that the world is going to  
5 change as this hearing progresses and the intervenors  
6 have been told throughout, present your evidence on  
7 what there is today. Now I have load forecast  
8 testimony all but prepared. Mr. Campbell says, well as  
9 we all know there is going to be a December update to  
10 the load forecast.

11 What is different now from a year ago and  
12 two years ago as to why it is suddenly important for me  
13 to have my expert stand down from his present testimony  
14 and look at the new load forecast and file something on  
15 that?

16 We have made decisions about the way this  
17 hearing is going to be conducted in light of the  
18 changing circumstance and it ought not to be changed at  
19 this late date.

20 Those are my submissions, Mr. Chairman,  
21 on why the proposal itself should not find favour with  
22 the Board.

23 If the proposal does find favour with the  
24 Board, as I indicated before, Mr. Chairman, it is only  
25 sensible, in my submission, to deal with the Northwatch

1 motion first, for the reasons I expressed earlier, any  
2 recognition of the basis upon which that motion is  
3 brought, and it is brought on the basis that there is  
4 no longer before this Board any application which  
5 attaches your jurisdiction, it's on the basis that  
6 Hydro now has something before you upon which it would  
7 not be safe for this Board to rule, and how it can be  
8 proposed by those who bring and support this motion  
9 that the world can be made better by letting the  
10 parties see if they can narrow the issues is beyond me.

11 I mean, why does Mr. Greenspoon want --  
12 he brings a motion, he says, throw out the whole thing,  
13 it's a waste of time, there is no reason to have it.  
14 And we are going to go away and let's say we come to  
15 some agreement on the issues, why as a matter of logic  
16 or common sense does the Northwatch motion then not  
17 have to be heard? It has to be heard. It has to be  
18 heard, and if it has to be heard, it has to be heard  
19 now before we spend the time and money on this process.

20 Let me respond just to a couple of  
21 comments made by some of the other counsel.

22 THE CHAIRMAN: Just before you leave that  
23 one. What do you say about Mr. Rosenberg's proposal  
24 that the discussion, at least initially, should do  
25 exactly that, address the Northwatch motion and the

1 issues that were put there?

2 MR. MARK: Mr. Chairman, I think Mr.  
3 Rosenberg is more or less reflecting what I indicated  
4 earlier, that my understanding of what the only  
5 meaningful thing that was going to go on in these  
6 discussions, let's talk about the whole enterprise here  
7 because something is seriously amiss if we are just  
8 going to proceed blithely along hearing about a couple  
9 of hydraulic plans which are only their because Hydro  
10 doesn't, for some reason, want to defer them according  
11 to the timetable their own investigations say they  
12 should defer them.

13 But I don't know, in specific response to  
14 Mr. Rosenberg's comments, Mr. Chairman, I don't know  
15 what the purpose is or even whether there is a purpose  
16 that should be sanctioned in this hearing.

17 If the enterprise no longer makes sense,  
18 if the foundation and the underpinnings of the original  
19 concept of the hearing disappeared, then Ontario Hydro  
20 can withdraw its application. It is that simple, and  
21 it can, in conjunction with the government and other  
22 parties, pursue whatever course it thinks is  
23 appropriate, if it wants, to see that there is some --  
24 we avoid this problem in the future. It is manifest  
25 there is a problem with this approach. Why, if the



1       object, as Mr. Rosenberg suggests is to decide whether  
2       we are going to have a hearing or not, I don't think we  
3       need that process. It is a fundamental simple  
4       question. Either Ontario Hydro is prepared to withdraw  
5       the application or it's not. I don't see it has to be  
6       the subject of a month of debate.

7               DR. CONNELL: Mr. Mark, the difficulty I  
8       have with your position is that it seems to me that the  
9       ground in part for your opposition to Mr. Campbell's  
10      proposal is at variance with the ground that you are  
11      staking out for support of the motion were it to come  
12      before us. I hesitate to put this to you because we  
13      are not dealing with the motion now, but you  
14      acknowledged in your discussion of point 2 that there  
15      are a range of issues, and you cited several important  
16      issues of public policy which you believe are urgent,  
17      which require a public hearing on which a great deal of  
18      money has been invested. And yet, on the other hand,  
19      you are proposing that this is not a valid hearing for  
20      engaging in those issues.

21             Perhaps you could help me resolve that,  
22      and I presume if this hearing were to come to a close  
23      you must have in mind that somewhere, sometime in the  
24      not too distant future the money and the time and the  
25      people would be found to engage in such deliberations.

1                   MR. MARK: Dr. Connell, you and I have  
2                   had this debate a few times, I think, already, and it  
3                   really boils down to a frank examination of what the  
4                   purpose and role of this hearing process is.

5                   The foundation of this Board's  
6                   jurisdiction, the foundation for the hearing is that  
7                   you do have before you an application and an  
8                   environmental assessment which qualify under the  
9                   Environmental Assessment Act for your review. If we do  
10                  not have such an application, as important as the  
11                  issues surrounding it may be, as urgent as they may be,  
12                  there is no warrant for their continued consideration.

13                 It is, with respect, Dr. Connell, that  
14                 simple. This is not an exercise which is in the nature  
15                 of a public inquiry or a Royal Commission into  
16                 electricity planning. It is an inquiry into a specific  
17                 application by Ontario Hydro.

18                 I remind you, Dr. Connell, Ontario Hydro  
19                 has expressly disclaimed the notion that what is before  
20                 this Board is the planning concepts or the planning  
21                 framework. Ontario Hydro has said what you have before  
22                 you are applications for approvals of facilities. And  
23                 if it can be demonstrated to you on the motion that in  
24                 fact those applications are not the result of the DSP,  
25                 they have nothing whatever to do with the environmental

1       assessment filed with this Board in support of the  
2       hearing, then there is nothing before you to consider.

3               Indeed, I would go beyond that - we  
4       really are talking about the motion - I would go beyond  
5       that and support what Mr. Poch says in his written  
6       submissions on the Northwatch situation. There is a  
7       danger in this Board considering those issues on the  
8       basis of an inappropriate environmental assessment by  
9       Ontario Hydro, and in the absence of specific plans, in  
10      the context of which those issues are to be considered.

11             So, the simple answer is, Dr. Connell, if  
12      there is no application within the definition of the  
13      Act, then this Board ought not to continue further. If  
14      the concern is wasted public expenditure, which is, of  
15      course, a legitimate one for the Board to look at, I  
16      suggest to you, Dr. Connell, that the best way to  
17      preserve that expenditure is to preserve the evidence  
18      we have given to date. It's there, the parties have  
19      retained and paid for qualified experts on a range of  
20      issues to present their views and their evidence. The  
21      case for the benefit for future generations is only  
22      harmed, in my submission, if what we do is we take that  
23      record of evidence and then we compromise it by a  
24      process of bargaining among some members of the public  
25      who have private interests in agendas. That is surely

1 the way to discount the value for the future  
2 generations of what this Board has done to date.

3 Mr. Chairman, I was proceeding just to  
4 respond a couple of points raised by other counsel in  
5 their submissions this morning.

6 Mr. Campbell advised that he was  
7 prepared to make intervenor funding available for this  
8 process. If the process finds favour with you, Mr.  
9 Chairman, while I am not the funding proponent, I  
10 suggest that it may well be inappropriate for the Board  
11 to grant intervenor funding for that purpose.

12 The granting of intervenor funding will  
13 undoubtedly extend and protract those negotiations. In  
14 the interest of ensuring that the parties have a real  
15 interest in bringing these to a conclusion within a  
16 time frame which is reasonable, my submission, Mr.  
17 Chairman, it would be counterproductive.

18 And for those intervenors who are public  
19 interest groups, Mr. Chairman, this issue of what we do  
20 with Hydro for the future is not new to this hearing.  
21 It is for many of them, such as Energy Probe and  
22 others, their very raison d'etre and there is no reason  
23 for it to be funded out of the public purse, out of my  
24 client's ratepayers' pockets.

25 Secondly, Mr. Chairman, scoping of the

1       hearing was expressly contemplated at the outset. We  
2       have been scoping since Day 1. This Board has clearly  
3       ruled on applications for intervenor funding, that if  
4       the task now identified was one which it ought to have  
5       been carrying out with your intervenor funding, there  
6       should be no more intervenor funding available for that  
7       purpose.

8               Because my fear, Mr. Chairman, is that  
9       with the funding having run out for many of the  
10      intervenors, this process is going to become a way for  
11      prolonging work at the public expense with no real  
12      benefit, as I see it, for that expenditure.

13             On the question of the comments that have  
14      been made to you on the schedule, Mr. Chairman, should  
15      this proposal find favour with you, the MEA believes it  
16      would undoubtedly be the wrong thing to proceed with  
17      Panel 2 evidence either concurrently with these  
18      discussions or prior to these discussions. Panel 2  
19      evidence is after all the planning approaches and  
20      fundamental questions panel. I can't see that it makes  
21      any sense to go to the expense of hearing that evidence  
22      while many of those issues are under discussion.

23      [11:55 a.m.]

24             And, secondly, Mr. Chairman, I agree that  
25      it will be very difficult for large parties, and



1       certainly for small parties, to deal with these  
2       discussions in the intensive way that I think, Mr.  
3       Chairman, you have correctly identified that they must  
4       be dealt with while proceeding with the evidence.

5               It would be a terrible mistake to let  
6       these discussions go on ad hoc when they can be fit in  
7       over some extended period of time. If we're going to  
8       do it, it has to be like it has been with the hearing,  
9       nose to the grindstone, with a fixed schedule and then  
10      we will see where we stand.

11             And lastly, Mr. Chairman, you've heard  
12      there is the question of the objectives of the Phase 1,  
13      and I merely say to you that having listened to many  
14      counsel today it is certainly not clear, and indeed I  
15      think it is clear that there is no agreement amongst  
16      the parties on even what the objectives of this process  
17      seem to be.

18             We have from Mr. Rosenberg who says it  
19      should be limited to the Northwatch motion, to  
20      suggestions that on a really good day we could actually  
21      resolve a number of technical issues, and I support the  
22      view that you express, Mr. Chairman, that if you are to  
23      let this process go forward there must be a very brief  
24      time within which we explore, firstly, the question of  
25      the objectives and, unless there is agreement on that,

1       we should not waste further time and money on it.

2                   Subject to your questions, Mr. Chairman,  
3       those are my submissions.

4                   MS. PATTERSON: Mr. Mark, I take it that  
5       you are saying that you would go ahead and present your  
6       evidence for Panel 2 without hearing anything further  
7       from Hydro about any changes that have occurred in its  
8       plans?

9                   MR. MARK: That's correct.

10                  MS. PATTERSON: My second point is that  
11       you basically say that the Board has no jurisdiction to  
12       consider any process of what would happen after this  
13       hearing came to a close, and I wonder whether you  
14       considered Section 14 of the Environmental Assessment  
15       Act where it talks about terms and conditions and the  
16       methods and phasing of the carrying out of the  
17       undertaking, as well as that the proponent entering  
18       into one or more agreements related to the undertaking  
19       with any person with respect to such matters that the  
20       Minister considers necessary.

21                  MR. MARK: Clearly there has been -- in  
22       any of the scoping of the hearing, in any of the  
23       evidence presented there has been no discussion of that  
24       from Ontario Hydro and as appropriate as those terms  
25       and conditions may be in some settings, Ms. Patterson,

1       you are dealing here with a question that legislative  
2       change is surely required to change the question or to  
3       address the question of how Ontario Hydro is regulated  
4       and who it must respond to and be accountable to.

5               MS. PATTERSON: But I think there is sort  
6       of a continuum of what kind of mechanism there might  
7       be. There can be a whole new regulatory scheme or  
8       there can be something related to what's gone on at  
9       this hearing.

10              MR. MARK: But the point I'm making is  
11       this: You are right, to the extent that you do deal in  
12       the issues that you address in your reasons which --  
13       for example, the approvals that you want to be  
14       contingent upon the happening of certain other events,  
15       it is no doubt within, or I would think offhand, it's  
16       within your power to make Ontario Hydro report, whether  
17       it's to this Board or in some other way as part of this  
18       process, but what I'm talking about here is really the  
19       parties' recognition that there are issues which  
20       frankly don't have to be dealt with today, and it may  
21       be inappropriate to deal with them today.

22              For example, is nuclear an option for the  
23       province. I mean, there has got to be, and we all  
24       know, there has got to be some other hearing, some  
25       other day before some other body where that issue is

1       going to be dealt with. That's a question of  
2       fundamental legislative change for the review of  
3       Ontario Hydro which, in my respectful submission, is  
4       not part of this Board's jurisdiction.

5               MS. PATTERSON: My last question, I  
6       guess, is that you have dealt with the waste of public  
7       money and the preservation of the evidence that has  
8       been given. And if you support Mr. Greenspoon's  
9       motion, basically the record is of Hydro's evidence and  
10      very little else; how is that useful for the future?

11             MR. MARK: Well, I would certainly  
12      support keeping -- even if you go through this process,  
13      and we are going to have -- I think the filing dates  
14      have to be preserved, but I guess you are talking about  
15      the waste if Mr. Greenspoon's motion is successful,  
16      let's say for arguments sake today, you are correct,  
17      the evidence is what it is. Some evidence has been  
18      filed, some evidence has not been filed, there's been  
19      many exhibits filed, there's been cross-examination.

20             As importantly the parties have largely  
21      made investment in the expertise and gathering the  
22      evidence and on the assumption that these matters are  
23      going to be dealt with elsewhere, much of that  
24      expenditure can be preserved.

25             To look at it from another perspective,

1 are we going to be any better off if this process goes  
2 ahead. Well, I suggest to you the very rationale of  
3 the process is that we are going to have results  
4 arrived at without the benefit of having further  
5 evidence on the record. I can see nothing more  
6 inimical to the public interest having that result.

7 If there no further questions, Mr.  
8 Chairman, those are my submissions.

9 THE CHAIRMAN: Thank you Mr. Mark.

10 MR. MARK: Thank you.

11 THE CHAIRMAN: Mr. Heintzman.

12 MR. HEINTZMAN: Mr. Chairman, and Members  
13 of the Board, I have one document which I will be  
14 referring to and I would ask that Ms. Findlay hand it  
15 up to the Board.

16 The document is entitled Environmental  
17 Mediation: From Theory to Practice, a document  
18 prepared by the Canadian Environmental Law Association  
19 under the auspices of the Federal Departments of  
20 Justice and Environment.

21 Mr. Chairman, and Members of the Board,  
22 on behalf of AECL I will be making three submissions  
23 which are set forth in my letter which was delivered to  
24 the Board last Friday. The first submission is that  
25 there is no legitimate expectation, or some might say,



1 no realistic likelihood that mediation or negotiation  
2 will be successful or ought to be entered into, and I  
3 would submit to the Board that this process ought not  
4 to be entered into unless there was such legitimate  
5 expectation.

6 The reason I will be saying that is  
7 because mediation is not an appropriate mechanism to  
8 deal with what is before this Board and, in that  
9 respect, I will be referring to CELA's document which  
10 analyzed the basis upon which mediation can be applied  
11 to environmental issues and on any of the criteria  
12 discussed in that report, and it seems to be the only  
13 one available - and Members of the Board have been  
14 asking this morning about what is the past record in  
15 this regard - there is no expectation that the issues  
16 before this Board could be successfully mediated.

17 The second issue which I will present to  
18 you is that it is completely inappropriate for private  
19 mediation to now take place. Mr. Mark has made that  
20 point and I will, therefore, shorten down my  
21 submissions. That from the very beginning, well before  
22 this Board commenced its formal proceedings, the public  
23 was told and the participants were told that this was  
24 to be a public and open hearing, a decision by the  
25 Board based upon a public hearing. Applying the

1 criteria established under the Environmental Assessment  
2 Act, because in any process, be it mediation, you have  
3 to have criteria.

4 So it's not just the fact that it was to  
5 be public, but that it was to be in accordance with the  
6 criteria under the Act.

7 And the third point which I will make is  
8 that AECL should not be required to pay for this  
9 expensive new mediation process that is now sought to  
10 be started.

11 Now, as to the first issue, as to whether  
12 there is any legitimate expectation that mediation of  
13 the issues before this Board will be successful, I  
14 really don't see how you can argue to the contrary.

15 This is a need and rationale hearing,  
16 this is a hearing in which fundamental issues of  
17 planning and public policy are at stake. I just do not  
18 understand how you can mediate need and rationale. It  
19 has not been suggested this morning any basis upon  
20 which you can mediate people's views of need and  
21 rationale.

22 And not only that, Mr. Chairman, it's not  
23 an issue upon which parties should be obliged to  
24 compromise. Mediation is a compromise process. There  
25 is no rationale for people being required to compromise

1       their views on that subject.

2               This is not a hearing about a discrete,  
3       site-specific, a hearing where two hydrologists are  
4       differing about whether the water flows are in one  
5       direction or another, or the flows thereof, these are  
6       fundamental issues and I say it's completely  
7       inappropriate to mediate that kind of an issue.

8               The second point of course is that there  
9       are dramatic and extreme choices before this Board, and  
10      Mr. Mark has taken you to some of them; the elimination  
11      of acid gas emissions by the use of nuclear power. I  
12      mean, that's a fundamental choice. The decision to  
13      plan to the upper, I mean, that is as fundamental an  
14      issue as is before this Board. Those are not the kind  
15      of issues upon which there are narrow viewpoints, they  
16      are from one extreme to the other.

17              And I won't go on because Mr. Mark has  
18      elaborated on that. But the variance of view is such  
19      that the process is not one which is the proper subject  
20      of mediation.

21              It's a hearing into an entire system,  
22      it's not a hearing into a specific site, it's into  
23      Ontario Hydro's whole system for 25 years for the whole  
24      province. And I say that there are not only other  
25      extreme and dramatic choices open to the Board, there

1 are dramatic differences of opinion on all of these  
2 issues.

3 So you take those four ingredients, it is  
4 just, in my respectful submission, impossible, or  
5 putting it as I would, there is no legitimate  
6 expectation, nor should there be, that parties will  
7 mediate and compromise their views on those subjects.

8 Now, I have heard both from Mr. Campbell  
9 and this morning about the subjects that could be  
10 mediated. It was said to us that: Well, we might be  
11 able to mediate the amount of the demand management.  
12 Well, within the planning period, that is not a matter  
13 which is subject to mediation, it's not a matter upon  
14 which parties should be expected to compromise.

15 It is said we should mediate the amount  
16 of non-utility generation during the planning period.  
17 The same answer.

18 It is said we should mediate the future  
19 regulatory process. In my respectful submission, there  
20 are so many problems involved in that idea that it's  
21 just a non-starter and it's a non-starter when Ms.  
22 Couban says that she doesn't even have authority, after  
23 all this discussion this last week or so, for the  
24 government to even enter into that issue as to whether  
25 it's properly a matter of discussion before this Board.

1                   Ms. Patterson says: Well, perhaps it  
2 falls under Section 14. Section 14 does contemplate  
3 that after acceptance the plan can have certain  
4 conditions attached to it, but now we are being asked  
5 to get into a discussion well before there's been any  
6 acceptance of a plan at all.

7                   The only thing that I can see that really  
8 could be mediated is -- and I think one gentleman this  
9 morning said we would mediate the termination of the  
10 hearing. Now, to me that is a completely unacceptable  
11 thing for the Board to get into, that we would have a  
12 mediation process set up to terminate the hearing.

13                   If the termination of the hearing is to  
14 occur, then Ontario Hydro knows how to terminate the  
15 hearing, it can apply to the Minister for the  
16 termination of the hearing. But certainly this Board  
17 should not participate, in my respectful submission, in  
18 a process of mediation to terminate the hearing.

19                   The Board's jurisdiction is to hear the  
20 application and to hear it until it's finished and if  
21 the application is not to proceed, then it will either  
22 be dismissed at the instance of some parties or  
23 withdrawn at the instance of another party or decided  
24 by the Board in a public and open way.

25                   So I have been looking around for an



1 issue that could be mediated. Just to give you one  
2 example of the failure of mediation, we have been  
3 intending the scoping of the hearing. Now, have we  
4 narrowed any hearing, any of the panels through  
5 scoping.

6 Well, I have only been here since  
7 September and I have not seen one instance in which  
8 scoping has narrowed the opinions or evidence or  
9 whatever has been presented to the Board.

10 The one that I have been involved in was  
11 to try to get LMSTM runs and I have been trying on  
12 behalf of AECL since March to try to get just one LMSTM  
13 run out of Ontario Hydro. Now, that's a pretty narrow  
14 issue, pretty simple thing to do - not simple according  
15 to Ontario Hydro, it takes a lot of man hours to  
16 produce one LMSTM run - but we haven't, after six  
17 months, got one LMSTM run.

18 So I say that is a pretty good  
19 indication, and because of fundamental disagreements  
20 apparently about what you do if you produce one then  
21 you have got to produce many, indeed you have got to  
22 produce hundreds apparently to make one fair. I say  
23 there's just no reasonable expectation that this  
24 process, whatever it is to do, is to mediate issues, to  
25 mediate termination, that it should go forward.

1                   There is no evidence before this Board  
2           that the process has a legitimate expectation of  
3           success and Mr. Campbell has not suggested one issue  
4           that should be mediated, other than mediating what we  
5           are going to mediate. I mean, that is the only thing  
6           he has said, let's go out and mediate what we are going  
7           to mediate.

8                   And unless the Board has a better  
9           indication than that of what we are to achieve, I say  
10          the Board should just say no.

11                   Now, this whole issue of mediation was  
12          discussed in this report which I have given to you and  
13          I will leave it with you because I think it bears  
14          reading. It is the only study that we are aware of the  
15          whole issue of environmental mediation.

16                   Starting at the first page, it is the  
17          page before the Roman numeral 1, the document advises  
18          in the second sentence that it was:

19                           Undertaken by the CELA under the  
20                           auspices of the federal Department of  
21                           Justice and Environment, it was  
22                           devised to create the analytical tools  
23                           necessary to facilitate experimentation  
24                           with, and implementation of, mediative  
25                           techniques in appropriate test cases. To

1                   this end, Phase 1 provided an annotated  
2                   bibliography of the literature and  
3                   case studies pertaining to the theory and  
4                   practice of mediating environmental  
5                   disputes.

6                   And if we can go over to page 5, Roman  
7           numeral 5, starting on the second sentence:

8                   Absent any body of Canadian  
9                   experience, identifying potential  
10                  applications and environmental mediation  
11                  requires an analytical plan or approach  
12                  that delineates the theoretical and  
13                  practical boundaries within which  
14                  mediation might effectively operate.  
15                  Perhaps the two most important  
16                  determinants in this regard will be the  
17                  scale and dimension of environmental  
18                  dispute and the objective that is  
19                  envisaged for the mediation process.

20                  The mediability of any environmental  
21                  dispute may, as a general rule, be  
22                  regarded as inversely proportionate to  
23                  the scope and dimension of the dispute  
24                  involved. Thus, local disputes with  
25                  easily identifiable parties and involving

1 issues of little concern beyond a  
2 specific geographic community are much  
3 more amenable to mediated resolution than  
4 are disputes that invoke the interest and  
5 jurisdiction of a broad range of  
6 constituencies and involve complex  
7 scientific and social issues.

8 The second factor that will  
9 significantly influence the useful scope  
10 of application of environmental mediation  
11 will be a function of the objective that  
12 is to be achieved by the dispute  
13 resolution process. For a variety of  
14 reasons it may not be possible or even  
15 desirable to seek a comprehensive  
16 settlement of all matters at issue among  
17 the parties.

18 [12:05 p.m.]

19 So, if the rule is that the larger the  
20 scope of the hearing, the less appropriate mediation is  
21 to resolution, this hearing of any that has ever  
22 occurred is the lest acceptable to mediation.

23 Turning to page 7, Roman numeral 7,  
24 conflict assessment criteria.

25 It is apparent that many environmental

1 disputes are not amenable to negotiated  
2 mediated settlement. The number of  
3 parties to the dispute may be unwieldy,  
4 the divergence of opinions may be too  
5 fundamental, a party or parties may have  
6 no incentive to engage in good faith  
7 negotiations. The promise that  
8 environmental mediation holds for  
9 enhancing the quality and efficiency of  
10 the environmental decision-making process  
11 may be quickly undermined if the process  
12 is implemented in inappropriate  
13 situations.

14 And at the bottom of the page: Is  
15 compromise possible.

16 Whatever the cost and disharmony  
17 associated with protracted battles in  
18 judicial, administrative or public  
19 forums, it is clear that certain issues  
20 do not lend themselves to negotiate a  
21 resolution. Examples of such  
22 non-negotiable issues include the  
23 principled opposition expressed towards  
24 certain forms of development, notably  
25 nuclear reactors, test case litigation



1 brought to establish precedent, or  
2 disputes that are so highly controversial  
3 that resolution in all but the most  
4 public of forums will deny the broad  
5 acceptance necessary for implementation.

6 Now, I leave the document for your  
7 further perusal and would particularly refer you to  
8 page 4, 5, 13, 17 to 18 and 32, where many of the same  
9 points are made and, in particular, you will find a  
10 model, a mediation model at page 14 where the paper  
11 sets forth a spread of hearings on the left that are  
12 less susceptible to negotiation and mediation as  
13 opposed to those where you might conceive of  
14 negotiation.

15 On page 32 the paper makes the point that  
16 all interested parties or stakeholders must be  
17 identified, and again all interested parties are not  
18 before this Board because interested parties, in my  
19 submission, understood that this would be a public  
20 process dealt with by the Board and the Board would  
21 make the decision with interested parties providing a  
22 debate, but when you go to a negotiation process, if  
23 you are to have mediation, then all the parties would  
24 have to be involved in the process, not merely those  
25 who, relying upon the nature of this hearing, said

1       there are sufficient parties there to have the debate  
2       held in the public hearing.

3               There is another document which I have  
4       not given to you, which CELA put out at the same time,  
5       actually in the fall of 1983, entitled Environmental  
6       Mediation, Five Case Studies, and I refer that to you  
7       particularly in light of Dr. Connell's comments this  
8       morning about how has this process worked in the past.  
9       And reading that document they study five particular  
10      cases where mediation was applied. The only one that  
11      comes close to being of the nature of the present  
12      hearing is the mediation that occurred in Northern  
13      Alberta and resulted in the North Flood Agreement --  
14      Northern Manitoba. Alberta? I meant Manitoba.

15             That process, it's worth reading, took  
16      four years and they were dealing with a much more  
17      specific problem, although I am sure immediate to the  
18      people living in the area, that is flooding of lands  
19      for the purpose of hydraulic development, than we are  
20      involved in the present case where we are ranging over  
21      every policy issue non-site-specific that you can  
22      imagine.

23             I say to the Board, with the greatest of  
24      respect, that there is no possibility of the issues  
25      being mediated in under four years. If you were to sit

1 down and honestly try to mediate the issues before this  
2 Board and to get everybody to buy in as the process  
3 requires, four years at a minimum would be required to  
4 mediate the disputes before this Board, if precedent is  
5 of any value.

6 So I say on the first issue that there is  
7 no legitimate expectation that this process will be  
8 successful or that it is appropriate for the issues  
9 before this Board.

10 The second point that I wanted to make  
11 has been made by Mr. Mark and I will try to make it as  
12 short as possible, and that is the public has been told  
13 and the participants in this hearing have been told  
14 that this process would be a public one to be  
15 determined in accordance with the criteria under the  
16 Act.

17 I say it is just unacceptable for Ontario  
18 Hydro having put in its case and before one intervenor,  
19 or before we get to the intervenors, to stand up and  
20 say now we want to mediate. We have had a public  
21 hearing while I have presented my evidence. We have  
22 had a public debate while my evidence has been  
23 presented, but before the intervenors present their  
24 evidence, we want to mediate. I just say that's  
25 completely unacceptable.

1                   I have gone back and looked at some of  
2     the statements made to the Legislative Committee, made  
3     in 1988 when the government directed Ontario Hydro to  
4     develop its plan, where the Ontario government said,  
5     and I am quoting go, "These plan would be subject to  
6     public review." And the government specifically said  
7     that it had chosen the process under the Environmental  
8     Act to allow that to go forward. The Environmental  
9     Assessment Act provides for criteria, the government in  
10    1988 said those are the criteria which will be applied  
11    in a public review.

12                  When the present government came to power  
13    in 1990, in the Throne Speech in November 1990, the  
14    present government reiterated, and I am quoting:

15                         That the hearings before the Board  
16                            will continue. This will provide an  
17                            opportunity for an independent evaluation  
18                            of the economic, social and environmental  
19                            assessment aspects of all options,  
20                            including conservation, for Ontario's  
21                            electricity future.

22                         And in their paper, New Energy  
23    Directions, which is Exhibit 177, the government said:

24                            This government has decided that the  
25                            Environmental Assessment Board review of



1                   Ontario Hydro's Demand/Supply Plan is an  
2                   appropriate means for receiving public  
3                   input on Hydro's plants.

4                   In the DSP itself at page 1-9, Exhibit 3,  
5                   the documents says:

6                   It is the first plan to use explicitly  
7                   a publicly-reviewed strategy.

8                   Not a privately-mediated strategy, a  
9                   publicly-reviewed strategy as a basis for planning.

10                  I was going to read to you the statements  
11                  made by Mr. Howard and Mr. Poch and Ms. Couban and Mr.  
12                  Chapman and everybody else who was there as I was not  
13                  when this hearing commenced, every one of them said  
14                  that this was a unique opportunity to have a  
15                  comprehensive debate that will impact upon everybody in  
16                  Ontario, and rereading those submissions in light of a  
17                  suggestion that now a year and a half later we should  
18                  mediate just boggles the mind.

19                  The public nature of the hearing was  
20                  reiterated by all counsel at the time of the scoping  
21                  decision last March, and some of those submissions were  
22                  more dramatic and carried more impact than others, but  
23                  I remember Mr. Shepherd so I thought it was one of the  
24                  best statements that I have ever heard, about how we  
25                  had all been hired by the public to engage in a seminal



1 public debate, a seminal public debate, on long-term  
2 electricity planning in this province.

3 So I say it is completely inappropriate  
4 for this Board to recess and now permit private  
5 negotiation and mediation to go forward.

6 As to the third issue, there is no reason  
7 that AECL should be required to fund its involvement in  
8 this process, nor anybody else. I mean, if it were to  
9 go forward at all, it would have to be on a complete  
10 indemnity as to costs. We are not asking for that.  
11 Quite frankly, it appalls me because as Mr. Mark said,  
12 it's going to mean that the mediation process will just  
13 go on and on. But if it is to go on and on at the  
14 instance of the Applicant, then the parties who  
15 participate should have a complete indemnity as to  
16 costs.

17 I hesitate to say anything about the  
18 process that might go forward, but just discussing it  
19 makes me very concerned about what will happen.

20 If some issues are mediated I do not  
21 believe that the Board will have the power to continue  
22 the hearing. I do not see how you can have some issues  
23 mediated and removed from the table and the Board then  
24 supposedly making choices, making decisions not on what  
25 it believes to be in the public interest, not on what

1       it has heard by way of evidence, but on the basis of  
2       some decision made outside the hearing room which you  
3       are then to take account of, and if it's not a majority  
4       view or is a majority view, I just don't see how that  
5       kind of a process fits in to the environmental process  
6       which you would have to go on, if you do go on, in the  
7       further exercise of your jurisdiction.

8                       I further have a lot difficulty about the  
9       Board, as Mr. Campbell would say, monitoring the  
10      process. And I think that could run into real abuse,  
11      Mr. Chairman, if reports are going back to the Board  
12      about who is co-operating and who is not, who is taking  
13      what position and who is not. That is just a recipe  
14      for disaster in my respectful submission. And the  
15      Board, even if it's not a recipe for disaster, will be  
16      receiving information about which it is to do what in  
17      the ongoing hearing? It will have snippets of  
18      information about who took this position or that  
19      position, or what was advanced here or there, and is  
20      the Board then to not have regard to that in the  
21      ongoing hearing?

22                     So I say that if there is such a process  
23      the Board can have nothing to do with it, absolutely  
24      nothing, and that just indicates how difficult and  
25      unwieldy and uncontrolled the whole thing will be.

1 I would submit that the Board would have  
2 to direct that it would be unanimous, otherwise as Mr.  
3 Colborne said this morning the process can be used for  
4 some parties to gang up on others, and the smaller  
5 parties be left being the tail.

6 So your direction would have to be that  
7 at each stage everything would have to be unanimous.  
8 Does that have any reasonable expectation of success?  
9 I submit not. But if it doesn't, then I say that the  
10 process is fraught with all sorts of problems with  
11 respect to fairness, justice, fair dealing, et cetera,  
12 completely contrary to the idea of mediation which is  
13 intended to be unanimous.

14 As a final note, this process has nothing  
15 to do with scoping. Scoping we have had lots of chance  
16 for, if we wanted to scope any issue, we could have  
17 scoped them, we did scope them. To the extent it was  
18 successful, you are in a better position to determine  
19 than I am, but it has not seemed to me to be very  
20 successful.

21 This is not a scoping session we are  
22 going into. This a mediation session to either decide  
23 issues that the Board should decide, or to terminate  
24 this hearing, and neither, in my respectful submission,  
25 are appropriate mechanisms that this Board should

1       bless.

2                       Those are my submissions.

3                       THE CHAIRMAN: I guess that Mr. Campbell  
4       in his opening proposal did talk about the Board's  
5       participation, and I think that, again speaking for  
6       myself, I am quite aware of the difficulties and the  
7       risks involved in a process of that nature that you  
8       referred to, that the Panel has to keep itself in a  
9       position where it can make what decisions it is  
10      required under the statute to make and it can't  
11      compromise that by the kind of problems that you have  
12      made.

13                      On the other hand, I think there are some  
14      useful things in the way of directions and incremental  
15      steps forward that panels like us can do.

16                      We have had a 166 days of evidence in  
17      which there has been absolutely free-wheeling and  
18      pretty well unrestricted cross-examination of Ontario  
19      Hydro. So most of the issues as such have been pretty  
20      well brought to light. It is unlikely there is going  
21      to be any major issue that hasn't been at least  
22      referred to in the evidence up to now.

23                      Do I take it that you would be opposed to  
24      now having some kind of a discussion in which those  
25      issues were examined and the parties tried to reach



1       some kind of a consensus as to what was the appropriate  
2       things now in the present context for this hearing to  
3       continue to examine in the context of fulfilling its  
4       statutory mandate, which is to review the assessment,  
5       accept it or not, and deal with the undertaking and  
6       give the approvals or not give them, and if giving  
7       them, put on terms and conditions. It is a rather long  
8       question, I recognize.

9               MR. HEINTZMAN: First of all, if there  
10       are subjects which can be discussed by way of  
11       settlement, so far I have not heard any, and I would be  
12       glad for someone to tell me which one it is that can be  
13       the subject matter of those kind of suggestions.

14               Secondly, we can always have discussions.  
15       We could have had discussions since I have been here,  
16       since AECL has been a party. We don't require the  
17       Board's direction to have discussions.

18               So if it is just a question of us meeting  
19       this afternoon or whatever, if Mr. Campbell wants to  
20       meet with me, I am happy to meet with him. But what  
21       Mr. Campbell is asking for, and those who support him,  
22       is a process to be entered into, that this hearing be  
23       set aside and a new process, a mediation process.  
24       Let's make no mistake about that.

25               THE CHAIRMAN: I only know what I have



1       seen in the documents and I haven't heard that as being  
2       the -- it may be something that someone will suggest,  
3       but I haven't heard anyone today suggest that in those  
4       terms. I know that you and Mr. Mark both have an  
5       impression, and maybe a correct one, that there is  
6       another type of process that has been the subject  
7       matter of discussion. But it's been alluded to, as far  
8       as we are concerned, in a very indirect way.

9                   MR. HEINTZMAN: I would suggest, Mr.  
10       Chairman, that the board needs to do nothing further  
11       until a formal proposal comes forward. If all we are  
12       doing is discussing what we will discuss, then we are  
13       just wasting time.

14                   It is just seems to me we don't need to  
15       mediate what we will mediate. If a proposal comes  
16       forward from Mr. Campbell to deal with a specific  
17       issue, you can rest assured that everybody in this room  
18       will give him an honest time to discuss it.

19                   Certain subject matters have been  
20       proposed as the subject matter of mediation, I have  
21       given you some examples, that we mediate the demand  
22       management panel, that we mediate the NUG panel, that  
23       we mediate what we mediate, that we mediate future  
24       planning principles. Well, none of those in my view,  
25       my respectful view, are capable of being mediate.

1                   Now if there is something that can be  
2                   mediated, i.e., discussed, I am quite happy, and I am  
3                   just a telephone away to discuss them. But we don't  
4                   require an adjournment of the hearing. That can't be  
5                   what we are up to. I believe that is not what Ontario  
6                   Hydro is up to.

7                   Ontario Hydro either wants out of the  
8                   hearing and does not want to discontinue it or seek a  
9                   discontinuance of it, or something akin to that. If  
10                  that's what it wants then it should apply in the normal  
11                  course for a termination of the hearing. If it wants  
12                  something within the context of the hearing, then it  
13                  has had all the opportunity in the world in the scoping  
14                  sessions to try to achieve that and we are quite  
15                  prepared to discuss those issues. But I have not heard  
16                  one, and if you, Mr. Chairman, have heard one that can  
17                  be mediated, I would like to know what it is.

18                 MS. PATTERSON: So I take it this means  
19                 that nuclear facilities would not be taken off the  
20                 table by agreement with you. [Laughter.]

21                 MR. HEINTZMAN: Right. [Laughter.]

22                 THE CHAIRMAN: Thank you, Mr. Heintzman.

23                 Now it's getting almost time to break,  
24                 but I would like to know who else would like to make  
25                 submissions.

1                   Mr. Bullock? Just a minute, let me write  
2 the names down.

3                   MR. BULLOCK: On behalf of CNA, sir.

4 [12:27 p.m.]

5                   THE CHAIRMAN: Mr. Bullock on behalf of  
6 CNA.

7                   MR. BULLOCK: Sir.

8                   THE CHAIRMAN: Mr. Rogers on behalf of  
9 ONGA.

10                  MR. ROGERS: Yes.

11                  THE CHAIRMAN: Ms. Mackesy, Ms. DeQuehen,  
12 Mr. Power. Anyone else?

13                  All right. I think, if we may, we can  
14 stick to our new regime. We will adjourn now until a  
15 quarter to two.

16                  MR. HEINTZMAN: Mr. Chairman, Ms. Findlay  
17 reminds me that the document that I gave to you is not  
18 the whole book. If you would like the whole book -- we  
19 photocopied some of the pages, not all of them. If you  
20 would like the whole CELA proposal or indeed the  
21 examples that they have in the other booklet, I am  
22 happy to provide it to the Board.

23                  THE CHAIRMAN: Thank you.

24                  MS. KLEER: Mr. Chairman, a moment if I  
25 may.

1 THE CHAIRMAN: Yes.

2 MS. KLEER: I just want to raise again  
3 the issue that I raised in my earlier submissions. We  
4 need a response to let Dr. Wallace know what she's to  
5 do.

6 THE CHAIRMAN: Where is Dr. Wallace  
7 coming from?

8 MS. KLEER: She's coming from -- but she  
9 was going to come this evening and leave about 5:00,  
10 5:30.

11 THE CHAIRMAN: Where is she coming?

12 MS. KLEER: Lindsay. I don't know.  
13 She's coming to stay this evening.

14 THE CHAIRMAN: If I give an answer about  
15 what Ms. Wallace ought to do...

16 MS. KLEER: I guess all I would ask is  
17 that we have an answer, if we could have an assurance  
18 that we could have an answer by 4:00, 4:30.

19 THE CHAIRMAN: We will try and do our  
20 best.

21 MS. KLEER: Thank you.

22 THE REGISTRAR: Please come to order.

23 This hearing will adjourn until 1:45 p.m.

24 ---Luncheon recess at 12:30 p.m.

25 ---On resuming at 1:46 p.m.



1 THE REGISTRAR: Please come to order.

2 This hearing is now in session. Be seated, please.

3 THE CHAIRMAN: I must say at the outset  
4 that we are going to have to stop sharp at three  
5 o'clock this afternoon, which is our normal hearing  
6 time. Unfortunately there are commitments that we have  
7 that make it impossible for us to continue beyond that  
8 time.

9 If we do not finish everybody's  
10 submissions, then we will have to reconvene and  
11 continue them tomorrow morning at nine o'clock.

12 Mr. Bullock?

13 MR. BULLOCK: Mr. Chairman, I will be  
14 brief. In view of Mr. Mark's and Mr. Heintzman's  
15 submissions with which I and CNA are in substantial  
16 agreement.

17 To summarize CNA's position, Mr.  
18 Chairman, it is first of all that the Northwatch motion  
19 should proceed. We concur with Mr. Mark, and as I  
20 understood, Mr. Heintzman as well, that that is really  
21 the basis for the Board's jurisdiction.

22 If the Board were to dismiss the motion  
23 then we get on to the next stage of talking about  
24 potentially some facilitation station or mediation or  
25 ADR process, but certainly if the motion is upheld, if



1 the Board makes the order dismissing, then that is the  
2 conclusion of the matter and it really is a preliminary  
3 stage to be dealt with. So the motion should certainly  
4 proceed, Mr. Chairman.

5 CNA's position would be that the motion  
6 should be dismissed. It's simply the third dismissal  
7 motion that we have heard this year. It should be  
8 managed and dealt with in the same way as the other  
9 two, the one in March and one in July.

10 Thirdly, Mr. Chairman, the hearing should  
11 proceed as scheduled. Again it is CNA's view - and  
12 this is summarized, Mr. Chairman, in a letter that was  
13 provided to the Board late on Friday, it is CNA's view  
14 that for the reasons elucidated by Mr. Mark and Mr.  
15 Heintzman that the ADR process simply would not be  
16 productive and time would be better spent hearing the  
17 evidence and eventually argument in the hearing  
18 process, so the hearing should proceed as scheduled.

19 And, fourthly, Mr. Chairman in any event  
20 the filing deadlines as a number of the parties have  
21 referred to this morning should be kept as they are. A  
22 number of the parties alluded to the importance of  
23 having a complete record of evidence. I certainly  
24 concur with that, Mr. Chairman, if for no other reason  
25 than to complete the evidentiary record let's have the

1 parties file their witness statements and have that  
2 material available.

3 Perhaps more importantly, Mr. Chairman,  
4 it's my submission that it would assist the Board no  
5 matter what happens in ascertaining exactly what the  
6 parties' positions are.

7 You suggested, Mr. Chairman, that in the  
8 context of cross-examination various issues were  
9 fleshed out. I certainly agree with that, but  
10 certainly the witness statements are going to be the  
11 definitive statements of parties' ultimate positions, I  
12 would suggest to you, and that that will assist the  
13 Board in any event no matter which direction the Board  
14 chooses to go.

15 I had mentioned, Mr. Chairman, that CNA  
16 was not one of the intervenors with whom Ontario Hydro  
17 spoke about the ADR process or mediation process and  
18 certainly in discussing it with other smaller parties,  
19 Mr. Chairman, part-time parties such as OCI, there  
20 certainly is some confusion and not a lot of  
21 information about that particular proposal and, in  
22 fact, as I understand it, there may well be parties who  
23 are just now learning about Hydro's ADR proposal and  
24 there may be some difficulty with parties getting  
25 instructions even to speak today Mr. Chairman.

1                   With respect to the smaller parties, the  
2                   part-time parties' interests, I found counsel for  
3                   NAPA's comments this morning very helpful. I think  
4                   that he very succinctly set out some of the  
5                   difficulties for small parties and a mediation process,  
6                   the concern about getting lost, if you will, in the  
7                   maelstrom.

8                   And, finally, Mr. Chairman, let us be  
9                   clear that this really is, I would submit to you, a  
10                  fork in the road. The Board is now being asked whether  
11                  or not to continue along with the formal hearing  
12                  process, the public hearing process as set out in the  
13                  Environmental Assessment Act or whether to switch off  
14                  on another track, Mr. Chairman, the ADR track.

15                  I think that it really is, if you think  
16                  of decision trees, it really is a fork and there really  
17                  is a decision to be made here. CNA, as we summarized  
18                  in our letter, Mr. Chairman, is most concerned that  
19                  once you get an ADR process rolling, the momentum of  
20                  it, as Mr. Shepherd suggested this morning, is going to  
21                  carry it along a fair ways.

22                  My submission to you is that the Board  
23                  has to be very concerned that they are the Panel, they  
24                  are the tribunal delegated the decision-making power  
25                  under the Environmental Assessment Act and that they

1       ought to be the Board, the ultimate arbitor, if you  
2       will, the ultimate decision-maker in this whole  
3       process.

4               CNA certainly believes that these kinds  
5       of public policy decisions ought to be made in public  
6       on the evidence. And again, Mr. Chairman, we are at  
7       the stage where we don't have all of the intervenors'  
8       evidence in yet, we are at a situation where all we  
9       have heard is cross-examination and, again, it's  
10      important to crystallize what various parties' issues  
11      are.

12             Again, Mr. Chairman, difficulty coming to  
13      any sort of consensus on difficult issues. The two  
14      that occur to us particularly are the question of  
15      planning to the median or planning to the upper. That  
16      seems to be a very basic issue that I would submit to  
17      you parties are just not going to be able to deal with;  
18      and the second basic issue, very basic issue is the  
19      whole question of response portfolio, what methods of  
20      supply are in or on the table and what aren't.

21             We heard Mr. Mattson's comment this  
22      morning on behalf of Energy Probe. We certainly know  
23      what their position is. That gives us some cause for  
24      concern, Mr. Chairman, when talking about how an ADR  
25      process or mediation process could proceed along.



1                   So certainly, Mr. Chairman, I couldn't  
2     put it any more strongly than Mr. Mark did or Mr.  
3     Heintzman did, that we ought not to be pursuing the ADR  
4     process, we ought to proceed on with the motion, have  
5     that heard, proceed with the hearing as scheduled.

6                   If such a thing were to happen, Mr.  
7     Chairman, as the Board were to direct that an ADR  
8     process were to be followed, CNA is concerned about the  
9     differentiating or differentiation that seems to be  
10    made constantly between intervenor parties and funding  
11    for intervenor parties and non-intervenor parties such  
12    as CNA and certainly CNA would, if the process were to  
13    continue, be interested in proceeding.

14                  My submission to you would be that it's  
15    the kind of process where all parties ought to be  
16    included, ought to be invited to participate and that  
17    certainly there should be, as my friend Mr. Heintzman  
18    suggested, appropriate indemnification for parties who  
19    are not intervenors but who are going to be put to  
20    fairly great expense if they indeed intend to  
21    participate in the process.

22                  I would be happy to take any questions,  
23    Mr. Chairman, from you or Members of the Board.

24                  Thank you, sir.

25                  THE CHAIRMAN: Thank you, Mr. Bullock,



1 Mr. Rogers.

2 MR. ROGERS: Thank you, Mr. Chairman,  
3 Members of the Board.

4 Speaking on behalf of the Ontario Natural  
5 Gas Association I must say that we fall within the  
6 confused category of participants about this proposal.  
7 There are those in favour of it, those against it and  
8 those of us who are confused.

9 I was not contacted by my friend Mr.  
10 Campbell, who obviously has been very busy on the  
11 telephone and, hence, I'm not really sure what it is  
12 that these people will be talking about over the next  
13 month.

14 I have heard a range of potential topics  
15 from, what hearing hours the Board might pursue in the  
16 coming weeks, to whether or not Ontario Hydro should be  
17 regulated under some new regime. I want to make or  
18 submit to the Board that whatever is proposed to be  
19 negotiated must be limited, it seems to me, sir, by the  
20 fact that we are dealing with serious issues of public  
21 policy in this hearing.

22 Indeed my friends Mr. Mark and Mr.  
23 Heintzman alluded to that in their comments. I, with  
24 great respect, submit that there is a very large  
25 limitation on the topics and the kind of things that

1 are susceptible to agreement by settlement of the  
2 parties who happen to be at this hearing.

3 It is somewhat presumptuous of us to say  
4 that we can, by agreeing among ourselves, settle issues  
5 which will affect the energy consumers of the Province  
6 of Ontario and indeed Canada as a whole for the next 25  
7 years. There just are issues that are not appropriate  
8 to be negotiated and settled by parties at this  
9 proceeding with private interests to protect insofar as  
10 those issues go to matters of important public policy.

11 Now, my client is not opposed to  
12 attempting to talk to the other parties and trying to  
13 facilitate and expedite this hearing. We are all in  
14 favour of anything that will do that.

15 And also I must submit that if any talks  
16 are to take place, all of us have to be there. I mean,  
17 it's not the kind of thing that you can come in for an  
18 hour or two or a day. If these talks are going to go  
19 on for the next month my client for one, I will advise  
20 them, has to be represented and every moment that those  
21 discussions are taking place.

22 At the moment because of the uncertainty  
23 that I feel about what is to be discussed - you alluded  
24 to this yourself, Mr. Chairman - I'm not sure what  
25 advice to give my client because I'm really not sure

1        what we are being asked to agree to here, and without  
2        being presumptuous it might be of great assistance to  
3        the parties in knowing what position to take if we can  
4        have some feedback from the Board as to what - I know  
5        this wasn't your idea - as to what the Board thinks  
6        might be accomplished to help you through this process,  
7        with this mediation proposal. If there are some things  
8        that you would like to see the parties agree to, then I  
9        think that would be very useful.

10                Now, my third of a very convoluted group  
11        of simple submissions is that my client is in favour of  
12        doing whatever we can to expedite this hearing. My  
13        client wants the hearing to go on to a conclusion which  
14        will yield some results which will be of benefit to all  
15        the participants in this hearing and the province as a  
16        whole. We don't want to see the hearing end.

17                Therefore, if the Board feels that some  
18        form of mediation would be useful, my client will  
19        willingly participate.

20                I must tell you, sir, that I have serious  
21        reservations about what can be accomplished by such a  
22        process in view of what I have heard this morning,  
23        particularly having regard for the wide range of  
24        expectations of the parties as to what can be  
25        accomplished by this process.

1                   I have made the point before that I  
2           sometimes feel the parties here have an unrealistic  
3           expectation as to what you can do at the conclusion of  
4           this case. I feel some of the parties have an  
5           unrealistic expectation as to what this mediation  
6           process can achieve now, but it doesn't hurt to talk  
7           about things, perhaps there are some things that can be  
8           achieved that will be of benefit to us all.

9                   If the Board does decide to pause whilst  
10          these discussions take place, I on behalf of my client  
11          ask and submit to you with respect that you ought to  
12          keep a very short leash on that corollary proceeding  
13          that will be going on because it would be unfortunate,  
14          I submit, if we got sidetracked from the task at hand  
15          which is to proceed with the evidence to a conclusion  
16          of the case.

17                   And so if there is to be an adjournment,  
18          I ask that it be a short one.

19                   Thank you, sir.

20                   THE CHAIRMAN: Ms. DeQuehen. Is Ms.  
21          DeQuehen here.

22                   Mr. Power.

23                   MR. POWER: Just a few brief comments,  
24          Mr. Chairman.

25                   I guess my client, South Bruce, falls



1       into the confused category as well and I think it's  
2       primarily due to lack of notice. Ontario Hydro did not  
3       consult directly with us.

4               The first notice that I have of this  
5       proposal to adjourn the matter is as of 3:13 on the  
6       afternoon this last Thursday and have been over the  
7       phone on the weekend with my client, they are a  
8       committee and they can't get together so unfortunately  
9       I cannot tell you how my client feels on the matter  
10      regarding the proposal, but the initial reaction is  
11      that there is concern about the validity of this  
12      process.

13              For some many years they have been  
14      promising this community that this hearing is going to  
15      continue on, they have been making plans for making  
16      their presentation in the next three to four months and  
17      the thought of having this deferred for an  
18      indeterminable amount of time really questions I guess  
19      in their mind what they are doing here and whether they  
20      should stick in it much longer.

21              Secondly, approximately a year ago South  
22      Bruce tried to raise this matter out of this hearing  
23      process, recognizing that it is rather inefficient. So  
24      they wrote directly to the chairman of Ontario Hydro at  
25      that time and proposed a process similar to this, that



1 we agree to meet out of hearings to see what we could  
2 sort out. The chairman at that time wrote back and  
3 said: Terribly sorry, it is a matter before the Board  
4 and we can't discuss it with you except before the  
5 Board.

6 So, now we find ourselves back here 10,  
7 11 months later in completely a different position. So  
8 I guess my client's question, before they can even  
9 respond to Ontario Hydro's proposal, is why the change  
10 in attitude, why were they not willing to discuss out  
11 of the hearings process the same issues that they now  
12 want to discuss in the coming months.

13 And if I can get an answer from Ontario  
14 Hydro regarding that today we will try and get our  
15 instructions from our client tomorrow if possible.

16 If there's no further questions...

17 THE CHAIRMAN: Thank you.

18 MR. POWER: Thank you.

19 THE CHAIRMAN: Mrs. DeQuehen. Mrs.  
20 DeQuehen.

21 MRS. DEQUEHEN: Mrs. DeQuehen from  
22 Environmental Protection.

23 Mr. Chairman, we supported the motion of  
24 Mr. Greenspoon wholeheartedly, believing Mr. Greenspoon  
25 was prepared to stand up to the motion, to stand by it

1 and defend it. We support dismissal because we believe  
2 that the objectives and reasons underlying this process  
3 have become obscure and invalid.

4 If the process is not to be dismissed,  
5 some account must obviously be taken of these problems.  
6 The process seems to have run aground because everyone  
7 seems to agree that something is required at this  
8 moment, be it adjournment to redefine the matter and  
9 elucidate the problems.

10 Now, if I could just give one example of  
11 a serious difficulty encountered it might help to  
12 decide how the process might be remedied, if possible,  
13 if not dismissed.

14 Mr. Mark of MEA made some statement  
15 suggesting, I don't know exactly what the wording was,  
16 but something to the effect that we now appreciate that  
17 the matter before the Panel involves consideration of a  
18 broad plan and details are not required. He then went  
19 on to list the components of the broad plan, stating  
20 that the role of nuclear was to be decided.

21 Hydro's expectation is similar. If I  
22 could just turn to this for a moment. This is from  
23 Panel 10:

24 Mr. Chairman, what expectation, if any,  
25 does Hydro expect to get from this

1                   hearing, from this Panel with respect to  
2                   the nuclear option?

3                   Ontario Hydro expects...this is Mr.  
4       Campbell...Ontario Hydro expects that the Board in  
5                   examining the nuclear and all other  
6                   options will have to arrive at some  
7                   conclusion as to what are the  
8                   characteristics, advantages,  
9                   disadvantages, et cetera.

10                  Well, it is quite impossible to come to  
11       such a conclusion without considering the details of  
12       every aspect of nuclear energy, and I really feel the  
13       people have been misdirected.

14                  If I could just turn to a direction given  
15       by the Panel to intervenors on July the 14th, this is  
16       scope of intervenor evidence.

17                  The assessment for a complex plan must  
18       have a broader focus than the assessment  
19       of a project. It is not reasonable to  
20       expect in a plan details of technology.  
21       It is quite impossible to do a full  
22       environmental assessment of a technology  
23       without resorting to such detail and if  
24       anything less than a full environmental  
25       assessment, leading to conclusive

1 judgment is not acceptable.

2 And so these dilemmas arise and everyone  
3 is having such problems.

4 We, therefore, agree that some system  
5 should be set up whereby people could raise their  
6 problems and have a process of resolving and solving  
7 them, but the problem isn't really to do with the  
8 number of issues, it appears to rather involve the  
9 Board and to do with a direction to do with what is on  
10 the table and what is not, what is incongruous, what is  
11 inappropriate, what is contradictory.

12 We support that this should happen within  
13 this formal process before the Board and at this time.  
14 We feel it could very well happen by written submission  
15 and reply. Unless this process is a formal one,  
16 there's no way all parties can participate and there  
17 can be no broad representation.

18 [2:05 p.m.]

19 We are arguing against Hydro's  
20 suggestion, a suggestion presented by Hydro, supported  
21 by others, setting up an informal negotiation, a  
22 process within a process, if you like, which could be  
23 regarded as a settlement out of court, closed session,  
24 negotiations, mediation. The reason we couldn't  
25 support this is because there are various intrinsic



1 reasons why this process would not be acceptable.

2 First of all, this whole hearing, it is  
3 adversarial and that cannot be denied. We need the  
4 formal process because of that.

5 Secondly, as someone said before, there  
6 would be layers within layers and layers of judgment and  
7 representation. It should all happen within one  
8 process for it to be clear rather than for the position  
9 to become more obscure, muddled and manipulated.

10 Without a formal process I am afraid  
11 that a negotiation process becomes very exclusive.  
12 There would be closed sessions. There may be some  
13 public meetings but much of it would be done behind  
14 close doors.

15 The Chairman mentioned that this has been  
16 going on for two weeks. Well, very many parties,  
17 ourselves included, knew nothing about this until last  
18 Thursday when the message on the 800 number was changed  
19 informing us that something was happening, and it  
20 wasn't until we got here today that we found out what  
21 the nature of what was happening after we prepared our  
22 submission in the support of the motion. Hence, we are  
23 not really in a position to make a definite submission  
24 on what has happened today because we have to go back,  
25 discuss it and actually review. I am afraid that that



1 would happen unless there was a formal process with a  
2 proper information service.

3 Fourthly, who is going to decide which  
4 issues are alive? It will lead to a bargaining  
5 process, power struggle and what we are really looking  
6 for at this moment is clarity, not further  
7 complications.

8 But above all, this is supposed to be a  
9 public, an open public hearing process.

10 The staff of the Board have been  
11 scrupulous in setting out information and up to this  
12 point everybody has been informed and able to  
13 participate. Although we can see the absolute need for  
14 an adjournment, a revision, and a thorough look at the  
15 objectives as they stand and whether in fact the whole  
16 process valid or not, I think it is very necessary to  
17 undertake that at the moment, but we feel very strongly  
18 that it should happen within the framework of this  
19 hearing.

20 Thank you.

21 THE CHAIRMAN: Thank you, Mrs. DeQuehen.

22 Is there anyone else who hasn't spoken  
23 who hasn't said anything.

24 Oh, yes, Mrs. Mackesy. Thank you.

25 MRS. MACKESY: Thank you, Mr. Chairman.

1                   To begin with, I would like to mention  
2   two what might be called housekeeping matters.

3                   First, I would like to thank the Board  
4   for having transcripts taken of today's proceedings.  
5   And second I would also like to mention that there may  
6   be parties and participants who are unaware of what is  
7   actually going forward today. Because of a speed of  
8   mail delivery, some people will not have received a  
9   copy of Ontario Hydro's letter until today or later. I  
10   know of one participate who had not yet received it as  
11   of yesterday afternoon. What I am getting it is, there  
12   may be people who are not here today but who would like  
13   to comment on Ontario Hydro's suggestions.

14                  Now to move to my submission on the  
15   Northwatch motion and Ontario Hydro's proposal.

16                  Generally, I have a concern about Ontario  
17   Hydro's proposal being a backroom deal process that  
18   further limits public participation.

19                  On November 12 I filed a two-page  
20   response to the Northwatch motion, it contained no  
21   request for a particular decision but it did make some  
22   comments on the hearing process. Because I think those  
23   comments are relevant to Ontario Hydro's proposal, I  
24   would like to read them into the transcript before  
25   commenting directly on two points in Ontario's

1       proposal.

2                       My November 12 response to the Northwatch  
3       motion had five numbered points, and to read them:

4                       First, to my mind the hearing to this  
5       point has not been a waste of time and money in that it  
6       has put on the record some indication of the approach  
7       of the different parties.

8                       Secondly, my concern still remains  
9       regarding an issue addressed in the Panel 7 motion in  
10      January 1992; namely, that although this hearing is for  
11      the benefit of Ontario generally, the notice for this  
12      DSP hearing unfairly targets a few areas as hosts for  
13      prospective generation and transmission rather than the  
14      whole of the province.

15                      Third, in conclusion to the preliminary  
16      presentation which I filed in September I wrote, and I  
17      will quote from that:

18                      The 25-year DSP plan was an  
19                      opportunity for Ontario Hydro to bring in  
20                      a system stimulating electricity user  
21                      responsibility for the environment.  
22                      Ontario Hydro could have done this by  
23                      putting forward a plan fulfilling  
24                      electricity demands through building new  
25                      local generation. Instead, they chose to

1 look backward and expand the bulk  
2 electrical transmission system.

3 Generation plants built outside the  
4 areas of use and transmission lines built  
5 cross-country to move electricity from  
6 those plants to the area of use represent  
7 the failure of society to take  
8 responsibility for its electricity use.

9 Neither the January - and that should  
10 read - February 1992 Update nor I expect of the  
11 September/October 1992 changes have removed dependence  
12 on expanding the transmission system outside areas  
13 needing increased electricity supply.

14 Fourth, to my mind of the environmental  
15 assessment and hearing process seems to be used as an  
16 attempt to find a scapegoat so that the majority of  
17 society can escape the consequences of their own  
18 consumption, although I don't think the assessment and  
19 hearing process has to be used in that way.

20 I am concerned that the same escapist  
21 approach will be intensified by whatever process is set  
22 up to take the place of the DSP hearing.

23 And fifth, it is very difficult now for  
24 people who might be closely or directly affected by  
25 having to host the generation and transmission



1 facilities to take part in the DSP process. I am  
2 concerned that whatever process is put in place to  
3 replace that will make it even more difficult for such  
4 people to take part effectively.

5                   Going on to Ontario Hydro's November 10  
6 letter the two points I wish to address are, first, how  
7 the "changed circumstances" mentioned in the first  
8 sentence of the letter should be entered in evidence at  
9 this hearing, and second, what the alternative approach  
10 means.

11                   Regarding the first matter, changed  
12 circumstances, by changed circumstance I assume Ontario  
13 Hydro means the planning changes and the background to  
14 those changes under review or actually approved as  
15 suggested in Exhibits 780, 788 and 789. To my mind  
16 those changed circumstances should be formally  
17 presented as Ontario Hydro's exhibits in evidence to  
18 the hearing with an opportunity for interrogatories and  
19 cross-examination, so that all parties and participants  
20 have access to what the basis of discussion and  
21 decision-making is.

22                   This information should be presented  
23 fully and openly rather than as a result of a backroom  
24 deal between the proponent and some parties to present  
25 information on some developments and not present it on



1 others.

2                   Going on to the second matter, the  
3 suggestion about the alternate approach. I would first  
4 like to read into the record a general comment and then  
5 address three particular aspects of the proposal.

6                   First, the general comment comes from a  
7 letter I wrote to CELA, the Canadian Environmental Law  
8 Association, on October 9, 1992, in response to an  
9 invitation to attend a workshop on possible solutions  
10 for problems individuals and environmental and  
11 Aboriginal groups have in participating in  
12 environmental assessment and Joint Board hearings,  
13 particularly long hearings.

14                   The invitation included a different list  
15 of topics for the lawyer's group and the non-lawyer's  
16 group.

17                   I wrote back saying that the workload of  
18 participating in the Demand/Supply Plan hearing  
19 prevented me from attending the workshop, that I wanted  
20 to make some comments on the top of dispute resolution  
21 models. Because I see Ontario's Hydro alternative  
22 approach as an alternate dispute resolution model, I  
23 would like to read that paragraph into today's  
24 transcript.

25                   Again quote:

1                   I am not a lawyer but I have a few  
2                   comments to make on one of the topics  
3                   suggested for the lawyer group; that is,  
4                   alternate dispute resolution  
5                   modifications. Choosing these measures  
6                   could have severe adverse consequences  
7                   for people directly or closely affected  
8                   by facilities built as a result of  
9                   decision-making based on such measures.  
10                  These measures could very easily be used  
11                  to prevent individuals or sub groups from  
12                  knowing what is going on and from having  
13                  their concerns or issues considered  
14                  seriously.

15                 Prehearing sessions could restrict  
16                 issues list to the detriment of whoever  
17                 ends up having to host proposed  
18                 facilities. In labour relation style  
19                 settlements, procedures and mediation,  
20                 the representatives, either lawyers or  
21                 non-lawyers of a group, could trade away  
22                 the environmental of part of a group for  
23                 the benefit of the rest of the group,  
24                 without the individuals or sub group  
25                 knowing what is being done or having any

1 practical recourse against it, forcing  
2 people to work within such measures could  
3 make them waste their scarce time in ways  
4 that might be better spent in other  
5 approaches.

6 Now, to turn to the three particular  
7 aspects of Ontario Hydro's alternate process proposal.  
8 First, I would hope that any process of arriving at a  
9 consensus on some issues and narrowing the scope in  
10 others would not be used to refuse some party or  
11 parties the right to address an issue just because it  
12 was not acceptable to a large number of the parties,  
13 and I would hope this process would not be put forward  
14 as proof of the social acceptability of any matter.

15 Second, some people, including myself,  
16 can be very uncomfortable with the concept of an  
17 alternate process, seeing it as a backroom deal way of  
18 arriving at a decision whose real terms are not open  
19 scrutiny, perhaps even by the people participating in  
20 the process.

21 One deal outside the hearing was worked  
22 out between Ontario Hydro and the Central Ontario  
23 Coalition sometime ago. From the papers filed on that  
24 agreement I am dubious about how that protects the  
25 environment or the territory represented by the Central

1 Ontario Coalition. I would not be surprised to learn  
2 perhaps years into the future that some geographic  
3 section or group of people in the COC's territory were,  
4 so to speak, sold down the river to protect other  
5 sections and people. So I would not be comfortable in  
6 taking part in the suggested alternate process nor  
7 would I trust representation by another person or  
8 party.

9 Third, in addition to the process there  
10 is the problem of how much time an individual party  
11 could devote to it. I am already falling behind in  
12 preparing a presentation on this hearing and I don't  
13 have the intellectual and emotional strength to devote  
14 to yet another process.

15 To close, in my opinion one of the  
16 strengths of the environmental hearing process is that  
17 affairs are conducted in open with exhibits and  
18 transcripts of the proceeding. The alternate  
19 resolution processes take away from that strength and  
20 also make it more difficult for the people ultimately  
21 directed or closely affected by a project to be  
22 involved.

23 Thank you.

24 THE CHAIRMAN: Thank you, Mrs. Mackesy.

25 Mr. Wright.



1                   MR. WRIGHT: Mr. Chairman, Board, I am  
2 here to speak against the Ontario Hydro proposal. I  
3 think the motion should be heard on the closing down  
4 and the hearings stopped.

5                   The direction and management of Ontario  
6 Hydro is at the moment in complete disarray. A couple  
7 of years ago you could see the tips of the iceberg,  
8 today a lot more of the iceberg has been shown, and  
9 this is no one's particular fault, and Ontario Hydro in  
10 their section of operating a large business is  
11 certainly not alone.

12                  The direction and management of Ontario  
13 Hydro is in complete disarray, and internal systems are  
14 a lot at fault in this as well as a focus and a focus  
15 that fits in with current thinking and the people of  
16 Ontario. And there is no practical way for at least 12  
17 months, if not longer, that they could get themselves  
18 together to review what they said yesterday in the  
19 sense of some of the contradictions that have come out  
20 on their plans from, shall we call it, the new top.

21                  What I would like to see is an end to the  
22 hearings, but to use the process as a step forward for  
23 the future. There has been a tremendous focus on  
24 Ontario Hydro by a lot of people, and I think that the  
25 Board should ask all parties to submit their



1 recommendations for Ontario Hydro's future and be part  
2 of collating this to make sure that it gets through in  
3 as pure a form as possible for the new broom, if one  
4 might put it, of Ontario Hydro to take into  
5 consideration when they are replanning -- that's a bad  
6 word, when they are planning the next 25 years starting  
7 in a year or so.

8 There are precedents for this. Back  
9 sometime ago there was a man given a job for a hearing  
10 in British Columbia, Tom Berger I think his name was,  
11 he took his mandate and he twisted it a little to deal  
12 with the imperatives of the day, and I would like to  
13 think that the Board could take that into  
14 consideration.

15 Thank you.

16 THE CHAIRMAN: Is there anyone else who  
17 hasn't spoken yet who wants to say anything?

18 Is there anyone who has spoken that would  
19 like to say something in addition to what they have  
20 already said by way of reply?

21 Mr. Campbell is one. Ms. Couban. Anyone  
22 else?

23 Well, Ms. Couban and Mr. Campbell. Ms.  
24 Couban, do you want to go first.

25 MS. COUBAN: Thank you, Mr. Chairman, I

1 would be brief.

2 Mr. Heintzman referred to the  
3 government's view with respect to wanting a full and  
4 frank public debate with respect to the issues at this  
5 hearing, and he referred to debates that have taken  
6 place in the legislature, the Throne Speech, and also  
7 alluded to my opening statement and the opening  
8 statement made by others.

9 His comments, at least in my view, left  
10 the impression that by agreeing to the suggested  
11 process of discussions, my clients are somehow backing  
12 away from that view of wanting a full and a public  
13 debate on Ontario Hydro's Demand/Supply Plan.

14 There have been suggestions that these  
15 discussions will be backroom deals, closed door  
16 sessions, and phrases to that effect.

17 I would like to clarify that it is not  
18 the view of my clients that these discussions in any  
19 way forego the public debate on Ontario Hydro's  
20 Demand/Supply Plan, rather, we hope the discussions  
21 will focus the matters at this hearing. As I said  
22 previously, we hope to identify the outstanding issues,  
23 clarify issues that can be resolved, and clarify  
24 evidence that can be presented to deal with the  
25 outstanding issues.

1                   Ultimately, the parties will come before  
2                   this Board with respect to those matters. Therefore,  
3                   because ultimately this Board has control over the  
4                   process and has control over the decisions that are  
5                   made with respect to that process and at that process,  
6                   it is our view that the process maintains its public  
7                   nature.

8                   Further on that point, as I understand  
9                   it, the Environmental Assessment Board itself is making  
10                  attempts to streamline the hearings that are coming  
11                  before them, and one of the mechanisms that they appear  
12                  to be using is to encourage experts to meet outside of  
13                  the hearing process and sometimes they have encouraged  
14                  the parties to meeting outside of the hearing process,  
15                  with a view to resolving or clarifying issues.

16                  And I can point to, to rely upon, with  
17                  respect to that point, a number of recent procedural  
18                  directions that other panels of the Environmental  
19                  Assessment Board have made; for example, with respect  
20                  to the Storrington Landfill hearing and also the west  
21                  of London bulk transmission hearing.

22                  With respect to the point that Mr. Rogers  
23                  made when he suggested that there are wide and varying  
24                  expectations for the discussions and that he wasn't  
25                  sure what the discussions were about, in my submissions

1 I suggested that in the next period, whether it be two  
2 weeks or a shorter period of time, let's all sit down  
3 and discuss our expectations with respect to this  
4 process.

5 If we ultimately can't achieve anything,  
6 we will have only have lost two weeks or whatever  
7 period of time is deemed reasonable. That's on the  
8 downside.

9 On the upside we have the possibility of  
10 clarifying issues and resolving issues and possibly  
11 shortening the evidence to be presented.

12 Those are my submissions in reply.

13 Thank you, Mr. Chairman.

14 THE CHAIRMAN: Mr. Campbell?

15 MR. B. CAMPBELL: I guess I have three  
16 matters to address, Mr. Chairman, some of which will  
17 echo Ms. Couban's remarks.

18 I think the three, broadly speaking, are  
19 this question of concern that the parties will discuss  
20 issues actually beyond the scope of the hearing, the  
21 second is this question of maintaining the public  
22 interest, and thirdly, just some comments on some  
23 process matters.

24 With respect to the concern principally  
25 argued by MEA, that the issues that might be



1 contemplated in these discussions are beyond the scope  
2 of this hearing, I guess I would point out two things.  
3 First, that is yet to be decided. That is one of the  
4 very things that we want to sit down and talk to people  
5 about. However, I would draw the MEA's attention as  
6 has already been done to Section 14 of the Act, and the  
7 enumerated matters there that are listed as the  
8 Minister's ability to -- or an enumerated set of  
9 matters that the Minister can address in the event of  
10 approval, and they are generally taken as not exclusive  
11 of, but indicative of, the kinds of change of range of  
12 terms and conditions that a board should be willing to  
13 consider. In my submission they are very broad indeed  
14 and in a fairly broad planning context that we are  
15 dealing with here in any event I think my friend's  
16 concerns about matters being beyond the scope of this  
17 hearing are highly overblown.

18 [2:28 p.m.]

19 With respect to this question of does  
20 this proposal involve in some way, to pick up on Ms.  
21 Couban's theme, a back room or secret resolution, all I  
22 can say is that the suggestion is ridiculous and I  
23 think the perception argued by Mr. Heintzman and Mr.  
24 Mark is simply not sustainable.

25 Mr. Heintzman bases his submission on



1       some model of environmental mediation that doesn't  
2       contemplate a hearing at all, it involves an  
3       environmental issue arising and then a mediation  
4       process being used to resolve it and settle it  
5       completely without any oversight of a hearing panel  
6       and, in particular, without any oversight of a hearing  
7       panel that is charged with this panel's  
8       responsibilities.

9               The parties can decide what they want.  
10       No matter what they decide, if we could bring it before  
11       you and you could take a look at it and say we are not  
12       satisfied that that appropriately reflects the public  
13       interest in this matter, reflects the kind of public  
14       interest we are bound to consider under the  
15       Environmental Assessment Act, that would be a fair  
16       conclusion.

17              I don't think it would happen that way  
18       because I think, to pick up again on some of Mr.  
19       Heintzman's words, many of the parties represented in  
20       these discussions are supported by public funds through  
21       intervenor funding, they do recognize responsibilities  
22       to points of view and there are a broad range of public  
23       interests represented.

24              On the one hand, I think it does not sit  
25       in my friend's mouth to argue that there needs to be a

1 broad representation of public interest then to say  
2 that there is broad representation of public interest  
3 here and then to say, but any agreements would not  
4 reflect a broad public interest. I don't think that  
5 logic flows.

6 Now, Mr. Mark said that this matter was  
7 raised only at the 11th hour. I think that is a little  
8 unfair. It is correct to say that the particular  
9 proposal as to how to respond to the various factors  
10 that I discussed in my earlier submission was only  
11 brought to a position where it could be brought before  
12 you last week, but I would remind the Panel that as the  
13 capital program review proceeded, Ontario Hydro did  
14 raise a concern in September, of which the parties were  
15 aware, that the outcome of that may, in the view of  
16 some intervenors, have an impact on some scheduling  
17 matters and possibly on their cases.

18 At that time it was not seen fit to deal  
19 with that matter directly, it was felt not to be  
20 necessary at that point. But as matters have developed  
21 over the fall there have been a number of additional  
22 factors, as I dealt with in my submissions, which have  
23 in effect ripened into this proposal and, as I say, in  
24 my submission, it is not fair to say that some  
25 consideration of whether there needed to be any

1 consideration of the effect of changed circumstances  
2 has been apparent over the course of the fall.

3 Now, Mr. Heintzman based his submission  
4 in part on no reasonable prospect of success in his  
5 first area of submission, and I would ask the Board to  
6 recall the test that is implicit in his submissions to  
7 you. The test that is implicit in his submissions to  
8 you is that there needs to be unanimity amongst the  
9 parties in order to achieve anything which he would  
10 consider successful mediation.

11 I think if I were in the shoes of MEA and  
12 AECL right now I might quite be able to say that they  
13 saw unanimity as unlikely but unanimity not the test,  
14 the test that has been set up is absolutely a straw  
15 man.

16 Mr. Heintzman said: How can we mediate,  
17 how can we come to a mediated conclusion on this issue.  
18 We do not need to come to unanimity on an issue to make  
19 material progress in terms of bringing this hearing  
20 into a tighter focus and more realistically perhaps  
21 dealing with today's circumstances.

22 Unanimity is not required, and I have  
23 said from the beginning that I didn't believe it could  
24 be expected, but what can be expected is that some  
25 areas of agreement amongst a substantial number of

1 parties can be achieved and there will be some  
2 outliers, recognize that from a beginning.

3 AECL like MEA submissions are based  
4 putting everything else aside, on a recognition that  
5 they may be the outliers. Well, that may be and nobody  
6 is saying that they shouldn't then have their  
7 opportunity to convince you that any agreements that  
8 may have been reached are inappropriate. Nobody's  
9 rights are being denied by this.

10 And in assessing whether this kind of  
11 process is appropriate, Mr. Heintzman in particular  
12 referred to Mr. Shrybman's paper in '84 and I'd like to  
13 take you to the page Roman numeral 5 because he stopped  
14 reading in the middle of a paragraph.

15 And I would of like you to continue on  
16 that paragraph. You go to page 5, he referred to the  
17 bottom paragraph in part.

18 The second factor that will  
19 significantly influence the useful copy  
20 of application of environmental mediation  
21 will be a function of the objective that  
22 is to be achieved by the dispute  
23 resolution process. The paragraph  
24 starts.

25 For a variety of reasons, it may not



1                   be possible, or even desirable, to seek  
2                   a comprehensive settlement of all matters  
3                   at issue among the parties.

4                   That is probably right, that is probably  
5                   the circumstance we face. Anybody who thinks we can  
6                   settle all matters in front of all parties I think is  
7                   not being realistic and the proposal is not put forward  
8                   on that basis, but Mr. Shrybman very wisely goes on to  
9                   say:

10                   On occasion, the mediation exercise  
11                   may be limited to determining such  
12                   matters as who will participate in  
13                   subsequent negotiations; what substantive  
14                   issues will be addressed, or; what  
15                   process will be adopted to resolve these  
16                   issues. At the other end of the  
17                   spectrum, mediation may be undertaken  
18                   with the explicit expectation of not  
19                   only resolving all the issues in dispute,  
20                   but also of providing a resolution  
21                   mechanism for future disagreements that  
22                   may arise in consequence of ensuing  
23                   settlement.

24                   What I would like to submit to you is  
25                   that this paper contemplates a whole spectrum of



1 outcomes from environmental mediation, only some of  
2 which Mr. Heintzman referred to you.

3 The other thing I would like to remind  
4 the Panel about, I probably don't need to remind Ms.  
5 Patterson about, maybe I don't need to remind the Panel  
6 about, but in the Board's annual report on the second  
7 column of the Chair's message it reads as follows,  
8 at page 2:

9 We are improving the quality of our  
10 process and our decisions will  
11 accomplish these objectives by increased  
12 our control over the hearing process  
13 through case management, improving  
14 training for members and staff and use of  
15 alternative dispute resolution where  
16 appropriate.

17 More specifically this will involve  
18 significant preparation before the  
19 evidence is presented and deployment  
20 of adequate staff resources where  
21 necessary.

22 In my submission, this kind of proposal  
23 is entirely consistent with the direction that this  
24 Board has been speaking of in terms of dealing with  
25 matters before it in an expeditious and efficient

1 manner.

2 We are now at a point in the hearing  
3 where some alternative mechanism, taking advantage of  
4 significant preparation and with the possible  
5 assistance of resources such as a facilitator may well  
6 be appropriate and, in my submission, is appropriate to  
7 assist in the quality of this process and assisting in  
8 the general determination of the matters before you.

9 It is a direction that the Board has been speaking of  
10 regularly and, in my submission, this is an opportunity  
11 to reinforce that direction.

12 I think, Mr. Chairman, with respect to  
13 Mr. Heintzman's comments to the Board, he used the word  
14 I think monitoring the process, he says the Board  
15 cannot have nothing do with, agreement amongst the  
16 parties must be unanimous and it has nothing to do with  
17 scoping and, in my submission, he provided you with no  
18 rationale for any of those propositions. And in the  
19 context of large administrative proceedings, all of  
20 those propositions have been thoroughly rejected. The  
21 Board is entitled to be assured that progress has been  
22 made and this Board has done so in other proceedings.

23 The agreement must be unanimous. There  
24 has been no requirement that at the end of the day in  
25 order for agreement to come back before the Board or

1       that the outcome of negotiations are only useful where  
2       they are unanimous. There have been some requirements  
3       going in but the Board is always free to have brought  
4       before it agreement by less than the full group of  
5       parties before it and deal with the outliers.

6               And to say that this process has nothing  
7       to do with scoping is, in my submission, just a  
8       close-minded unwillingness to consider the advantages  
9       of these kinds of procedures and an undue clinging to  
10      the litigation model.

11             Mr. Heintzman complains then he doesn't  
12      really have a detailed proposal in front of him and to  
13      some extent he is absolutely right, and I suppose I  
14      could have worked up a very detailed proposal that  
15      would have been later coming to you but, quite frankly,  
16      I think it is important in these kind of processes -  
17      and I have been involved in them before - that the  
18      parties who are participating help define the nature,  
19      the issues to be dealt with, how they are to be dealt  
20      with in the process. It encourages what I call some  
21      buy-in to the process. It empowers people in terms of  
22      feeling that they can make a difference and it, in my  
23      judgment, leads to a better process with a higher  
24      probability of success.

25             As I say, my client is very concerned

1       that people feel the opportunity to participate  
2       sensibly in a process of this type and felt it  
3       inappropriate in the first instance to bring forward  
4       for approval or denial a fully developed plan for such  
5       a negotiation where everyone would have been worried  
6       about the details and not the concept.

7                It's the concept we are asking you to  
8       deal with today and you have what, in my submission, is  
9       a broad array of consensus for proceeding to try and  
10      put some flesh on that concept and come back to you.

11               As I say in my submission, that is just  
12      the kind of thing that this Board and this Panel should  
13      encourage.

14               Subject to any questions you may have of  
15      me, Mr. Chairman, those are my reply submissions.

16               I will stay standing, if this is a  
17      question; otherwise I would like to sit down.

18               THE CHAIRMAN: No, it is not a question.  
19      No, it is not a question.

20               I would not expect that you would think  
21      that we could, in such a short time, with such a short  
22      conference, deal with all the many issues that have  
23      been brought forward today.

24               I have been saying 'speaking for myself'  
25      advisedly during the day and I wanted to make sure that



1 at least I had some broad consensus about what I am  
2 about to say.

3 I think it goes without saying that  
4 everybody agrees that in any kind of process there is  
5 usefulness in parties discussing issues and trying to  
6 resolve as much as they can. One wants to avoid labels  
7 such as mediation, arbitration, alternative dispute  
8 resolution or whatever because they all have different  
9 meanings to different people and sometimes they put  
10 limitations on what can be done.

11 But in a public processes this is much  
12 more difficult. The point raised by those opposing  
13 this process that we are here dealing with public  
14 issues in the interests of the people of Ontario is a  
15 very valid one and one that we certainly must  
16 constantly keep in our mind.

17 It would be unrealistic to think that any  
18 process that had the number of issues and number of  
19 parties involved could, in any short time, be resolved.  
20 On the other hand, it is certainly not inconceivable at  
21 this stage that some progress could be achieved. I  
22 think what we sitting here are concerned about, is that  
23 there be some usefulness to spending time on the  
24 exercise.

25 We were ordered by the Minister of the



1 Environment to hold a hearing and we have a mandate to  
2 hold that hearing and to complete it. That is what the  
3 statute says and that is what we are here to do.

4 We have a motion before us that the  
5 hearing should be terminated and that is a motion which  
6 we must entertain, one that we must deal with. We have  
7 an obligation to do that. If there is nothing that is  
8 before us that we must consider under the statute, then  
9 the hearing should be terminated.

10 Some parties here today say that the  
11 motion should be got out of the way before we do  
12 anything else; others say that we should at least  
13 explore the process suggested by the Proponent.

14 We of course have, and I think everyone  
15 recognizes this, a vital interest in how this might be  
16 done and we have the legal ability to control that  
17 process.

18 [2:50 p.m.]

19 I don't think I admit that I was as  
20 confused as Mr. Rogers about what really is planned  
21 here, but there certainly has been many direct  
22 statements and some that are indirect and some  
23 implications, and it has been a rather confusing day in  
24 that respect.

25 At the end of that day I am neither

1 persuaded that this proposal should not be tried nor  
2 persuaded that it should be tried. I have some very,  
3 very serious reservations about the feasibility of the  
4 process suggested for the reasons that I have already  
5 alluded to. I think that it is something that we are  
6 going to have to give great consideration to.

7 While I am not prepared at this stage to  
8 throw it out, I am not persuaded that we should not be  
9 going ahead with the motion, and then depending on the  
10 outcome of the motion, that we should then proceed with  
11 the hearing as planned.

12 I do think that I would like to know a  
13 little bit more specifically what Ontario Hydro has in  
14 mind in its first phase, and that is the phase which  
15 talks about the format of the process including whether  
16 the use of a facilitator would be beneficial, the  
17 timetable and the issues to be addressed within the  
18 process, including order.

19 I think we on the panel need a lot more  
20 specifics about that and the feasibility of that  
21 proposal. I think that when we adjourn in a few  
22 moments that it might be helpful for the parties to  
23 stay here and work on that and work on it tomorrow and  
24 work on it on Wednesday and work on it on Thursday, if  
25 necessary, in order to report back to us no later than

1 two o'clock on Thursday afternoon as to what progress,  
2 if any, has been made.

3 I recognize there will be people who will  
4 not have yet have had a chance to get instructions from  
5 their clients and any progress may have to be subject  
6 to that, but I think that in most cases, if not all  
7 cases, instructions should be able to be obtained a  
8 week from now.

9 These time limits aren't in stone. I  
10 want to reconvene this hearing at two o'clock on  
11 Thursday, regardless of where we are at, to get the  
12 report on progress, and of course we are here for any  
13 earlier session that parties think may be useful. In  
14 other words, Tuesday, Wednesday and Thursday should be  
15 regarded as hearing days, and we will make what use of  
16 them of that as we can.

17 If you come up against something that you  
18 can't get any farther on, maybe, just maybe, we could  
19 give you some directions.

20 I think I will stop now. I have probably  
21 said too much.

22 If there anybody who wants to ask  
23 questions or make any comment before we adjourn, please  
24 do that.

25 MR. GREENSPOON: I take it my motion is

1       adjourned until two o'clock as well?

2               THE CHAIRMAN:   Yes.

3               MR. GREENSPOON:   On Thursday.

4               MS. SPOEL:   A similar question.

5               THE CHAIRMAN:   Now that you are standing  
6       up, it reminds me of something I want to say.

7               I think that one of the things that does  
8       bother me is the smaller parties and how they  
9       participate in this, to make sure that they don't get  
10      left out in the cold, I think that's important.

11              MS. SPOEL:   I will ask another small  
12      party question which is Thursday is the day that our  
13      Panel 2 witnesses are supposed to be here and we  
14      haven't yet answered our interrogatories. We didn't  
15      get them until last week, the witnesses were out of  
16      town, and so on. So in terms of planning our lives for  
17      the rest of the week, should we take it that if the  
18      hearing proceeds on Thursday, that everything will be  
19      pushed back a week?

20              I know that when we scheduled Panel 2, it  
21      all happened to work out quite nicely as to when people  
22      were available, but pushing it back won't necessarily  
23      work.

24              Should we tell our witnesses to wait and  
25      see what happens on Thursday and this seek direction



1 then?

2 THE CHAIRMAN: I think that is what you  
3 will have to do. I think that's the only practical  
4 thing you can do.

5 MR. MARK: Mr. Chairman, it's not  
6 entirely clear to me. You haven't ruled yet whether  
7 you feel it necessary to hear the motion before you  
8 consider whether to endorse this proposal?

9 THE CHAIRMAN: If I can see that there is  
10 anything useful to be obtained from this process  
11 without hearing the motion, the chances are that's what  
12 we are going to do. I am not persuaded that that's  
13 there yet.

14 I am trying to be as open about it as I  
15 possibly can. If I think there is something useful to  
16 this process that can be done and Mr. Greenspoon is  
17 content to have his motion adjourned, then that's what  
18 will happen.

19 MR. GREENSPOON: I am content that my  
20 motion has been adjourned.

21 I am concerned, perhaps I can, without  
22 stating my concern, perhaps it will be understood that  
23 the executive assistant would be in attendance for  
24 those days.

25 THE CHAIRMAN: We will make any and all



1       that is available that we can, certainly.

2               MR. GREENSPOON: Yes. So that all  
3 parties might want to co-operate during the process in  
4 the next three days.

5               THE CHAIRMAN: Yes. Mr. Bullock?

6               MR. BULLOCK: Mr. Chairman, what about  
7 the filing dates for the rest of the witness  
8 statements?

9               THE CHAIRMAN: I don't know the answer to  
10 that. At the moment they stay as they are, as Ms.  
11 Patterson says. They stay as they are.

12              MR. SHEPHERD: Mr. Chairman, like the  
13 Board, I have other commitments at three o'clock, I  
14 suspect other people do too. Is it fair to say that we  
15 can come here tomorrow morning at nine o'clock and  
16 start working on this?

17              THE CHAIRMAN: I think when we depart  
18 maybe you could work out amongst yourselves how you  
19 want to proceed. This room will be available and we  
20 will be available and we will see what happens.

21              THE REGISTRAR: Please come to order.  
22 This hearing is adjourned.

23 ---Whereupon the hearing was adjourned at 2:55 p.m.,  
24 to be resumed on Thursday, November 19, 1992.

25 JAS/BD [copyright c. 1985]







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